

**TOWN OF LOVETTSVILLE, VIRGINIA
6 EAST PENNSYLVANIA AVENUE
LOVETTSVILLE, VA 20180
(540) 822-5788**

REQUEST FOR PROPOSALS ON-CALL CONSULTING SERVICES

SEALED PROPOSALS WILL BE RECEIVED IN HAND IN THE LOVETTSVILLE TOWN OFFICE, 6 E. PENNSYLVANIA AVENUE, LOVETTSVILLE, VA 20180, UNTIL **4:00 P.M. ON THE 13th DAY OF FEBRUARY, 2019** FOR:

PROVISION OF COMPREHENSIVE MULTIDISCIPLINARY PLANNING, PROFESSIONAL ENGINEERING, AND PROJECT MANAGEMENT SERVICES ON AS NEEDED BASIS AND AS REQUESTED BY THE TOWN FOR A PERIOD OF UP TO FIVE (5) YEARS FOR PROJECTS RELATED TO ARCHITECTURAL, TRANSPORTATION, STORM MANAGEMENT, WATER AND SEWER TREATMENT AND DISTRIBUTION, FACILITY & PARK DEVELOPMENT AND IMPROVEMENT, AND OTHERS AS DESCRIBED AND MAY BE NEEDED.

SOME OR ALL OF ASSIGNMENTS AWARDED UNDER THE RESULTANT CONTRACTS WILL BE FEDERALLY FUNDED; AS SUCH THESE PROJECTS SHALL BE SUBJECT TO COMPLIANCE WITH THE FEDERAL AND VDOT REGULATIONS CONTAINED IN THIS DOCUMENT AND ELSEWHERE. THE TOWN, VDOT'S CIVIL RIGHTS DIVISION OR OFFICE OF GENERAL INSPECTOR, GENERAL AUDITING DIVISION OF FHWA WILL PERFORM AUDITS TO ENSURE COMPLIANCE WITH ALL APPLICABLE TERMS AND CONDITIONS AND GUIDELINES CONTAINED IN THIS DOCUMENT OR ELSEWHERE.

PROPOSALS WILL NOT BE PUBLICLY OPENED.

IMPORTANT NOTES:

- Town of Lovettsville, Virginia reserves the right to reject any and all proposals, cancel this solicitation, and to waive any informalities or irregularities in procedure.
- In accordance with Code of Virginia § 2.2-4343.1, Virginia does not discriminate against individuals or organizations in the performance of its procurement activity.
- Late, unsealed, and electronic proposals not accompanied by the required 4 hard copies will not be accepted.

Town of Lovettsville

Karin Fellers, PE, Town Engineer
Town Contact
kfellers@lovettsvilleva.gov

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PART ONE – INTRODUCTION TO THE RFP REQUIREMENTS AND EVALUATION PROCESS

1. EVALUATION PROCESS

The Town of Lovettsville, Virginia is soliciting proposals from offerors having experience and qualifications in the areas identified in this solicitation. Each proposal must contain evidence of the offeror's experience and abilities in the specified area and other disciplines directly related to the proposed work. Other information required by the Town may include the submission of profiles and resumes of the staff to be assigned to the project, references, illustrative examples of similar work performed, and other information that will clearly demonstrate the offeror's expertise in the area of the services sought by this solicitation. Offerors are encouraged to elaborate on their qualifications and performance data or staff expertise, as well as provide alternative concepts.

Before the award of contract, successful offeror may be required to show they have the necessary facilities, experience, ability, and financial resources to perform the work in a satisfactory manner and within the time stipulated. If the solicitation contains special work of a complicated nature, or if it contains items or material or work the character of which will depend up the Firm's skill or experience, they may be required to show proof that they have a satisfactory record of similar work performed or materials furnished.

A Selection Panel will review and evaluate all proposals and identify firms that may be invited to submit more detailed proposals, conduct oral presentations, or both. The Selection Panel will rely primarily on the proposals submitted in order to select finalists and, therefore, offerors must emphasize specific information considered pertinent to the project and submit all information requested. The Town may award a contract, or initiate negotiations with one or more offerors without further contact with any other offerors. Evaluation of the proposals will be based on the criteria listed elsewhere in this solicitation.

The On-call or specific project contracts/Tasks will be awarded to one or more responsible offeror(s) capable of performing one or more category(ies) of work identified.

2. MANDATORY REQUIREMENTS

- A.** Offerors can be a firm, a consortium of firms or an individual, but must successfully demonstrate competence for one or more areas of service required in this solicitation. Offerors may submit proposals for one or more categories or subcategories identified below:
 - a. Transportation planning services;
 - b. Complete street engineering and designs services;
 - c. Complete water and sewer planning, engineering and designs services; and
 - d. Architecture Design and Planning for Town facilities including a Town Office Expansion;
 - e. Traffic engineering services;
 - f. Complete parks planning, engineering and designs services;
 - g. Project management/construction management and inspection services;
 - h. Support services, including all or some of the following:
 - 1. Environmental services;
 - 2. Public involvement;
 - 3. Survey;

4. Geotechnical services;
5. Civil engineering and design;
6. Structural design;
7. Landscape architecture;
8. Right-of-way and easement acquisition; and
9. Utility Relocation Support

B. Offerors submitting proposals in response to this RFP shall identify the category(ies)/subcategory(ies) for which they have submitted a proposal. To be qualified for full review under the selected categories or subcategories the firms must demonstrate the following key requirements:

1. Offeror has provided services for a minimum of five (5) years in the category(ies) or subcategory(ies) for which they've submitted the proposal.
2. Offeror has successfully completed three (3) projects in the category(ies) or subcategory(ies) which they've submitted the proposal.
3. Proposed Project Manager(s) shall have three (3) or more years of experience leading teams in projects related to the category(ies) or subcategory(ies) which they've submitted the proposal.

PART TWO - INSTRUCTIONS TO OFFERORS

1. **DISTRIBUTION OF SOLICITATION DOCUMENTS**

The distribution of this Request for Proposals (RFP), all addenda, and responses to questions will be by posting on the Town of Lovettsville, Virginia (the "Town") website www.lovettsvilleva.gov and the Commonwealth of Virginia website <http://www.eva.virginia.gov/pages/eva-i-buy-for-virginia.htm> (eVA site) and publication of a notice in a local newspaper of general circulation. The date and time of posting on the Town website and the eVA site shall be the date and time of the official issuance or notification of the RFP or any modification to the solicitation process. It is the responsibility of each offeror to check the Town website daily for posted notifications. The Town will not consider modification of any date, time frame, or addendum due to late receipt of notification based on subsequent advertisements or posting at any location other than the Town website and/or the eVA site.

2. **DEFECTIVE SOLICITATION DOCUMENTS**

Each offeror is responsible for having determined the accuracy and /or completeness of the solicitation documents upon which it relied in making its proposal, and has an affirmative obligation to notify the Town Contact immediately upon discovery of an apparent or suspected inaccuracy, error in, or omission of any pages, drawings, sections, addenda whose omission from the documents was apparent from a reference or page numbering or other indication in the solicitation documents.

If a potential offeror downloaded an electronic version of the solicitation documents, that potential offeror is responsible for determining the accuracy and/or completeness of the electronic documents.

If the successful offeror proceeds with any activity that may be defected by an inaccuracy, error in, or omission in the solicitation documents of which the offeror is aware but has not notified the Town Contact, the offeror hereby agrees to perform any work described in such missing or incomplete documents at the offeror's sole expense and at no additional cost to the Town.

Failure to acknowledge all addendums issued during the solicitation process within the proposal is considered an incomplete proposal document.

3. **ADDITIONAL INFORMATION**

All questions relating to this solicitation shall be submitted via email to **Karin Fellers** at kfellers@lovettsvilleva.gov and answers will be provided as an addendum to the RFP through the Website and eVA site for this RFP, usually within a week of question issuance. For a question to be considered, the subject line of the email must state the following: **On-Call Services RFP Questions**. Questions should be succinct and must include the submitter's name, title, company name, and telephone number. Prior to the award of a contract resulting from this solicitation, offerors are prohibited from contacting Town staff other than the Town Contact.

NO QUESTIONS WILL BE CONSIDERED IF THEY ARE SUBMITTED AFTER FEBRUARY 1, 2019 AT 3:30 PM.

If any questions or responses require revisions to this solicitation as it was originally published, such revisions will be by formal amendment only. Offerors are cautioned that any written, electronic, or oral representations made by the Town Contact or other person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written amendment to this solicitation issued by the Town through the Town Website and eVA site as discussed above.

4. PREPROPOSAL CONFERENCE

A preproposal conference will be held on January 30, 2019 at the Lovettsville Library (12 North Light Street) at 10:30 am. Consultants planning to submit proposals are encouraged to attend. Town Staff will describe upcoming projects and will answer questions from the group. Any substantive questions will be provided as an addendum to the RFP.

5. ON-CALL SERVICES RFP SCHEDULE

RFP Issuance	January 18
Pre-Proposal Conference (optional but strongly encouraged)	January 30
Deadline for submission of questions	February 1
Amendment Issuance, (as needed but no later than)	February 6
Proposals Due Date and Time	February 13
Oral Presentation by the shortlisted firms	Possibly weeks of 3/22 and 3/29
Award of Contracts	TBD
Commencement of Work	TBD

6. COMPETITIVE NEGOTIATION PROCESS

This solicitation was issued using Competitive Negotiation process for professional services, as defined and authorized in The Virginia Public Procurement Act (VPPA) § 2.2-4301. The Contract(s) resulting from this solicitation shall be subject to the terms and conditions as set forth herein, or elsewhere in the Town of Lovettsville and Commonwealth of Virginia rules and regulations. Under this procedure, the proposals will be opened privately and all information, including the identity of the offerors are not public record until an award determination has been made.

7. IMMIGRATION REFORM AND CONTROL ACT

The Department will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

8. REGISTRATION OF PROFESSIONAL SERVICE PROVIDERS

Prior to the time of submittal of the EOI, all business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission. Information about entity formation can be found at <https://www.scc.virginia.gov/default.aspx>. Foreign Professional corporations and Foreign Professional Limited Liability Companies (i.e., organized or existing under the laws of a state or jurisdiction other than Virginia) must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation <http://www.dpor.virginia.gov/>, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (Board). Board regulations require that all branch offices of professional corporations and business entities located in Virginia, which offer or render any professional services relating to the professions regulated by the Board shall be registered as separate branch office with the Board. All offices, including branches, which offer or render any professional service, must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at that office. All firms involved that are to provide professional services must meet these criteria prior to submitting an Expression of Interest to the **Town of Lovettsville**. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the

Code of Virginia.

Submission of a signed offer shall be certification that the Proposer has the required registration or is exempt from the requirement. However, proof of registration or exemption may also be required to be provided to the Town with a proposal submitted in response to an RFP, or if not specifically requested in the RFP shall be provided within twenty-four (24) hours of demand by the Town. For further information on the requirement for registration, contact the Board at the Virginia Department of Commerce, 3600 West Broad Street, Richmond, Virginia, 23230, telephone number (804) 367-8500.

9. PARTICIPATION OPPORTUNITIES FOR THE DISADVANTAGED BUSINESS ENTERPRISES (DBES)

"It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Small Business and Supplier Diversity certified DBE firms is maintained on their web site (<http://www.sbsd.Virginia.gov>) under the DBE Directory of Certified Vendors. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential sub-consultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited."

Any DBE or SWaM firm must become certified (with the Virginia Department of Small Business and Supplier Diversity) prior to your response being submitted. If DBE or SWaM firm is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE or SWaM sub-consultants. DBE or SWaM prime consultants are encouraged to make the same outreach efforts as other consultants. DBE or SWaM credit will be awarded only for work actually being performed by them. When a DBE or SWaM prime consultant subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime consultant must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

DBE or SWaM certification entitles consultants to participate in VDOT's DBE and SWaM programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.

If portions of the services are to be subcontracted to a DBE or SWaM, the following needs to be submitted with your EOI and both must reference the project number(s) for the services:

- Written documentation of the prime's commitment to the DBE or SWaM firm to subcontract a portion of the services, a description of the services to be performed and the percent of participation.
- Written confirmation from the DBE or SWaM firm that it is participating, including a description of the services to be performed and the percent of participation.

49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts. This data must be provided on the enclosed Firm Data Sheet.

VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. The successful prime consultant will be required to complete C- 63 form for both state and federally funded projects on quarterly basis.

Any DBE or SWaM firm must become certified (with the Virginia Department of Small Business and Supplier Diversity) prior to your response being submitted. If DBE or SWaM firm is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE or SWaM subconsultants. DBE or SWaM prime consultants are encouraged to make the same outreach efforts as other consultants. DBE or SWaM credit will be awarded only for work actually being performed by them. When a DBE or SWaM prime consultant subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime consultant must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

DBE or SWaM certification entitles consultants to participate in VDOT's DBE and SWaM programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.

10. The Town of Lovettsville does not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

11. The **Town of Lovettsville** assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within 10 work days of notification of selection when requested by the Department. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.

12. EXPENSES INCURRED IN PREPARING PROPOSAL

Town of Lovettsville accepts no responsibility for any expense incurred by any offeror in the preparation and presentation of a proposal. All expenses related to a proposal are the sole responsibility of the offeror.

13. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by an offeror or Consultant in connection with a procurement transaction or prequalification application submitted pursuant to subsection 4-101(2) of the Town of Lovettsville Purchasing Resolution may be exempted from public disclosure under the Virginia Freedom of Information Act ("VFOIA"). However, the offeror or Consultant must invoke the protection of this subsection prior to or upon submission of the data or other materials, and must identify clearly and in writing, in the spaces provided on the Proposal Form, the data or other materials sought to be protected and the reasons why protection is necessary or falls within the exceptions to the VFOIA. It is the offeror's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

14. SAMPLES

Offerors shall submit any samples required in this solicitation in accordance with instructions hereunder. Samples will not be returned. However, if an offeror requires that a sample(s) be returned, the offeror must submit a request in writing within fourteen (14) calendar days after proposal opening. The offeror shall arrange to retrieve the samples at their sole expense at a location and in a manner identified by the Town of Lovettsville. Samples not retrieved in accordance with these terms will be disposed of at the discretion of the Town not sooner than

thirty (30) calendar days after the Town staff notify the offeror of the availability of samples for return. Testing of samples may include disassembly or destruction. The Town shall not be responsible for any loss or damage or diminution of value in the samples while in the possession of the Town.

15. OFFEROR INVESTIGATIONS

Before submitting a proposal, each offeror must make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by the Town that the offeror will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful offeror from its obligation to comply in every detail with all provisions and requirements of the contract documents or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful offeror.

16. TOWN OF LOVETTSVILLE BUSINESS LICENSE

Offerors must comply with the Town of Lovettsville business license requirements, if applicable. For information on the applicability of this requirement, contact the Town of Lovettsville. PO Box 209, Lovettsville, VA 20180 (540) 822-5788.

17. QUALIFICATION OF OFFERORS

- a) Each offeror will be required, before the award of contract, to show to the complete satisfaction of the Town Contact that it has the necessary facilities, ability, and financial resources to comply with the contract and furnish the service, material, or goods specified herein in a satisfactory manner. Each offeror may also be required to provide past history and references which will enable the Contact to be satisfied as to the offeror's qualifications. Failure to qualify according to the foregoing requirements will justify proposal rejection by the Town of Lovettsville.
- b) All firms submitting Expressions of Interest (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet Federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All architectural or engineering firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data along with a Contractor Cost Certification for indirect cost rates required by FHWA order 4470.1A dated October 27, 2010 to the Department within 10 work days of being notified of their selection, whereby an official of an architectural or engineering firm shall certify that the indirect cost rate submitted does not include any costs which are expressly unallowable and that the indirect cost rate was established only with allowable costs in accordance with the applicable cost principles contained in the Federal Acquisition Regulations (FAR) of 48CFR31. A sample Contractor Cost Certification is available for architectural or engineering firm's use on VDOT website at <http://www.virginiadot.org/business/gpmmps.asp>. Should any firm on the consultant team fail to submit the required audit data and certification within the 10 work days, negotiations may be terminated by the **Town of Lovettsville** and the next most qualified team invited to submit a proposal.

18. DEBARMENT STATUS

The offeror shall indicate, in the space provided on the Proposal Form, whether or not it, or any of its principals, is/are currently debarred from submitting Proposals to Town of Lovettsville, Virginia, or any other state or political subdivision, and whether or not it is an agent of any person or entity that is currently debarred from submitting proposals to Town of Lovettsville, Virginia, or any other state or political subdivision. An affirmative response may be considered grounds for rejection of the proposal.

19. INFORMALITIES

The Town reserves the right to waive minor defects or variations from the exact requirements of the solicitation in a proposal insofar as those defects or variations do not affect the price, quality, quantity, or delivery schedule of the goods, services and/or construction being procured. If insufficient information is submitted for Town to properly evaluate the proposal by an offeror, the Town reserves the right to require such additional information as it may deem necessary after the proposal opening time and date, provided that the information requested does not change the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured.

20. AUTHORITY TO TRANSACT BUSINESS

Any offeror organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper and full legal name of the firm or entity and the identification number issued to the offeror by the Virginia State Corporation Commission must be written in the space provided on the Proposal Form. Any offeror that is not required to be authorized to transact business in the Commonwealth shall include in its proposal a statement describing why the offeror is not required to be so authorized. The Town may require a firm to provide documentation prior to award which: 1) clearly identifies the complete name and legal form of the firm or entity (i.e. corporation, limited partnership, etc.), and 2) establishes that the firm or entity is authorized by the State Corporation Commission to transact business in Virginia. Failure of a prospective and/or successful offeror to provide such documentation shall be grounds for rejection of the proposal or cancellation of the award. For further information refer to the Commonwealth of Virginia State Corporation Commission website at: www.scc.virginia.gov.

21. PROPOSAL WITHDRAWAL PRIOR TO PROPOSAL OPENING

No proposal may be withdrawn after it is filed with the Town Contact unless the offeror makes a request in writing to the Town prior to the time set for the opening of Proposals.

22. INTEREST IN MORE THAN ONE PROPOSAL AND COLLUSION

Multiple proposals received in response to this solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that an offeror is interested in more than one (1) proposal for a solicitation both as an offeror and as a subcontractor for another offeror will result in rejection of all Proposals in which the offeror is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two (2) or more offerors submitting a proposal for the work. Any or all proposals may be rejected if reasonable grounds exist for believing that collusion exists among any offerors. Offerors rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

23. CONTRACT AWARD IN THE BEST INTEREST OF THE TOWN

The Town reserves the right to accept or reject proposals, waive informalities or irregularities therein and to contract as the best interest of the Town may require in order to retain the firm that best meets the needs of the Town, as expressed in this RFP. Selection of a proposal does

not mean that all aspects of the proposal are acceptable to the Town. The Town reserves the right to negotiate the modification of terms and conditions with the offerors offering the best value to the Town in conjunction with the evaluation criteria contained herein prior to the execution of a contract, to ensure a satisfactory contract.

24. CONSULTANT NEGOTIATIONS AND PRE-AWARD AUDIT

VDOT's Assurance and Compliance Office (ACO) will conduct a pre-award evaluation for consultant "*professional services*" cost proposals having a value greater than \$200,000 prior to their execution. The consultant is required to submit a Federal Acquisition Regulations (FAR) audit meeting the requirements of Part 31 of Title 48 of the Code of Federal Regulations when a prime or combined prime and sub-consultant cost proposal has a value of \$200,000 or more. Pre-award evaluations are not required for off right-of-way Transportation Alternatives Projects.

25. CONTRACT COMPENSATION METHODS

The Town reserves the right to use a lump sum with not to exceed and/or hourly time and materials for various subtasks within a Task Order. Compensation type will be determined by the Town as part of the Scoping of Task Orders.

26. NOTICE OF DECISION TO AWARD

When the Town has made a decision to award the contract(s), an email with a Notice of Decision to Award will be sent to all offerors, using the email address provided in the Proposal Form.

PART THREE – TOWN OF LOVETTSVILLE INSURANCE REQUIREMENTS

Review this section carefully with your insurance agent or broker prior to submitting a proposal. See the Insurance Checklist (part of the Proposal or Proposal Forms) for specific coverages applicable to this Contract. The term "Contract," as used in this section, shall mean the fully executed Agreement covering the work entered into between the Town and the Consultant.

Prior to award of this Contract and upon any Contract extension thereafter, the Consultant shall provide to the Town Contact evidence indicating that the Consultant has in force the coverage and endorsements (collectively referred to hereinafter "coverage", "coverages" or "insurance") required below. The Consultant agrees to maintain such insurance until the completion of this Contract or as otherwise stated below or in the Contract Documents.

The Consultant shall maintain the required insurance coverage through the completion of the Contract, including all warranty and guarantee periods, as follows:

- a. The Consultant will maintain a general liability policy with \$1,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The insurers must list the member locality as an additional insured. The endorsement must be issued by the insurance company. A notation on the certificate of insurance referencing the additional insured status is not sufficient.
- b. The Consultant will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the Consultant to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. The Consultant will also carry employer's liability insurance with a limit of at least \$100,000 bodily injury by accident/\$500,000 bodily injury by disease policy limit/\$100,000 bodily injury by disease each employee.
- c. The Consultant will maintain automobile liability insurance with limits of at least \$1,000,000. The coverage is to be written with a symbol "1". The insurer must be licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better.
- d. The Consultant will maintain professional liability insurance with a limit of at least \$1,000,000. It is preferred that the coverage be on an occurrence basis. If the policy is on a claims-made basis, this should be noted. If the Consultant has professional liability insurance on a claims-made basis, such coverage must be maintained for at least three years beyond the expiration date of the policy in force at the time of this Contract. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better.

With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of coverage.

PART FOUR –SCOPE OF SERVICES

1. BACKGROUND

The Town of Lovettsville seeks proposals from qualified sources for provision of architecture services, transportation, water and sewer and parks planning, engineering and designs services for various state, federal and Town funded projects as described in more detail below.

Lovettsville is an independent incorporated Town of approximately 2400 people on the northern edge of Loudoun County in Virginia. The Town operates its own water and sewer supply system and owns and maintains several small parks. All roads within the Town are maintained by VDOT since the Town's population is less than 3500.

Transportation planning is a critical component of the Town's long and short term planning efforts. The Town recognizes the need to plan for and to construct various improvements to its transportation network such as new sidewalks, storm management, bicycle paths, traffic calming, traffic signals, and intersection improvements. There are also several roadways through Town providing regional commuting routes to Northern VA and Washington DC. The Town is committed to ensuring efficient mobility within and through the Town.

Water supply and distribution and sewer collection and treatment is also a critical component of the Town's services to properties within the incorporated limits. The Town recognizes the need to plan for and construction various improvements to the water and sewer system to maintain compliance with all state and federal regulations, provide safe drinking water and fire supply to the users and collect and discharge clean water to the environment. The Town is committed to ensuring that the water and sewer system remains functional and efficient for the users.

The Town has acquired and is in the process of developing and maintaining several park properties. The Town promotes a strong sense of community and utilizes the parks for community events as well as providing additional passive park amenities.

The Town has identified a need to expand their existing Town Office facilities to provide better meeting space and staff offices for more efficient operations.

Other projects may be needed within this 5-year on-call window that may or may not be currently listed in the proposed Capital Improvement Plan for FY20-24.

2. PURPOSE OF THIS SOLICITATION

The purpose of this solicitation is to obtain qualified engineers, planners, construction managers, and other professionals to assist the Town in implementation of critical transportation, water and sewer and park infrastructure improvement and planning projects. A list of possible upcoming projects is provided below in order of priority.

- i. E Broad Way Streetscape Improvements Phase 2A & 2B
- ii. S Church Street/ E PA Avenue Improvements
- iii. Town Office Expansion
- iv. Downtown Parking Lot
- v. Storm Water Management evaluation, design and implementation
- vi. Park development including lighting/power
- vii. Water and Wastewater Projects
 - a. Water line replacement (as part of streetscape projects)
 - b. Inflow and Infiltration reduction
 - c. Wellhead protection initiatives

- d. Sludge Management Evaluation and Improvements
- e. New elevated water tank
- f. Water Treatment Plant operations support and improvements
- g. Wastewater Treatment Plant operations support and improvements

The Town is seeking consulting support in the following specialization areas to effectively complete possible capital projects as listed above. Selected Offerors will be expected to provide specialized professional services in the category/subcategory areas of:

- A.** Architectural Design and Planning services,
- B.** Transportation planning services;
- C.** Complete street engineering and designs services, including storm management;
- D.** Traffic engineering services;
- E.** Complete parks planning, engineering and designs services;
- F.** Project management/construction management and inspection services;
- G.** Complete water and sewer planning, engineering and designs services; and
- H.** Support services, (all or some)
 - 1. Environmental services;
 - 2. Public involvement;
 - 3. Survey
 - 4. Geotechnical services;
 - 5. Civil engineering and design;
 - 6. Structural design architecture;
 - 7. Landscape architecture and Public Art Coordination;
 - 8. Right-of-way acquisition; and
 - 9. Utility Relocation Support

The Town will select multiple firms to be considered for the provision of categories of services as described above. The Town intends to award a contract for all or some of the Specialization Areas to one (1) or more offerors. Should an offeror be awarded a contract for multiple Specialization Areas, a single contract will be awarded covering all work. These contracts will be renewable annually, for a period not to exceed five (5) years.

The Town may select one or more Prime Consultants who may offer services in different categories and/or may have some overlapping categories. It is the Town's goal to select one or more offerors with the goal of covering as many service categories as possible

The Town is interested in selecting one or more Prime Consultants (with subconsultants as necessary) who can offer all categories of services that may be needed for a project listed above. For instance, if an Offeror is interested in providing services for the E. Broad Way Streetscape Improvements projects, they are encouraged to propose to provide services for all categories and subcategories they believe will be needed for this project. This might include categories B, C, F and possibly all subcategories listed under H.

As the need arises in any of the categories of services, the Town will select from among the approved firms for the needed service category as described below in the Procedures for Task Order Project Assignment to perform such services. However, the Town reserves the right to issue a separate solicitation for projects, if doing so is in the best interest of the Town.

The total value of each individual project shall not exceed one and half million dollars (\$1,000,000) and the sum of all projects performed in one contract term shall not exceed six million dollars (\$3,000,000).

3. PROCEDURES FOR TASK ORDER PROJECT ASSIGNMENT

The On-call Service Contract will be used mainly by any Town departments that need the services covered under this solicitation.

The following are procedures that the Town will follow to assign work to selected firms for a particular category(ies), however, the Town reserves the right to issue separate solicitations or waive requirements set forth below in part or whole if it is determined in writing by the Town that it is in the best interest of the Town.

- a. For routine or other smaller tasks where the projected design fee will not exceed \$150,000, the Town in its sole discretion may select the Consultant determined most qualified and best suited for that assignment.
- b. For complex tasks, task requiring services from multiple categories, or tasks whose projected value would exceed \$150,000, the Project Officer will develop a written scope of work and evaluation criteria to be used for determination of the most qualified and best suited firm for that assignment and will forward it to the firms approved for work under the applicable specialization category.
- c. The scope of work will include a description of the project, the deliverable items, and the estimated time limit for completion. The Scope of work will identify who shall be responsible for securing necessary permits, licenses, and approvals from local, state and Federal authorities. The Town will be responsible for payment of permit fees.
- d. The Consultant (s) shall submit a proposal for the work within ten (10) calendar days (unless the assignment specifies a different deadline) of receiving a request for proposal from the Town. At the minimum, the proposals shall include the following:
 - i. Detailed scope of work outlining firm's proposed methodology to perform the work, identify key issues and proposed solutions. (Scope will identify additional items the firm believes will or may be needed on the project);
 - ii. Key personnel assigned to the task and provide highlights of their key qualifications and skills and describe their responsibilities;
 - iii. Identification of applicable permits, licenses, and approvals necessary for the project; and
 - iv. Binding schedule for the task.
- e. The Town will review the proposals and will rank them based on the following criteria:
 - i. The ability to provide the specific needs for professional services as determined by the Town Project Manager or their designee;
 - ii. The availability of the firm and subcontractor's staff and their ability to meet a project's schedule requirements;
 - iii. The firm's responsiveness to the Town's request;
 - iv. Potential conflict of interest related to project design or construction;
 - v. The firm's performance record with the Town under this Contract; and
 - vi. Such other reasonable factors as may be specified in writing at the time of the assignment.
- f. The top-ranking firm will be required to submit a binding Fee and Schedule Proposal. The proposal shall consist of subtasks with lump sum not-to-exceed amount, as well as tasks which will be completed on a time or material basis as appropriate. All costs will be derived from the fully burdened hourly rates, all associated direct expenses

identified in the contract along with the identification of all required tasks and the estimated number of hours necessary to complete the entire assignment. The Town then will engage in negotiation with the top-ranking firm and if the negotiation fails to bear result, then the Town will formally terminate the negotiation process and request a non-binding fee and schedule proposal from the 2nd ranking firm and enter in a formal negotiation process. The procedures will be followed until the Town successfully negotiates a suitable project cost and schedule.

- g. The Consultant will only be authorized to proceed with work on a Task as approved by the Project Manager and upon receipt of a written Notice to Proceed from the Town.
- h. The Consultant shall name a designated representative who shall be the sole point of contact for the project. The designated individual shall be experienced in the categories of work listed for the project.

4. SERVICE CATEGORIES

Task orders issued under the contract(s) resulting from this solicitation may require more than one of the Specialization Categories described below. Project tasks will vary depending on the nature of the specific project. The Consultant regardless of Specialization Category may be asked to perform full project support services necessary for a successful project implementation and closeout.

All work shall be completed to Town of Lovettsville standards, Virginia Department of Transportation (VDOT) standards, the Virginia Department of Health, the Virginia Department of Environmental Quality or other Federal standards as identified, as applicable to the scope of work of the assignment.

The Town anticipates implementing a number of projects including, but not limited to: transportation master planning, pedestrian improvements; bicycle path improvements; traffic signal installation or upgrades; intersection modifications; roadway design; corridor improvements; storm drain master planning and improvements; water and sewer master planning; water distribution system mapping, repairs, replacement and new infrastructure including water lines, valves, hydrants, water tanks; water supply and treatment facility repairs, replacement and new infrastructure; sewer collection system mapping, repairs, replacement and new infrastructure including sewer lines, manholes, pump stations; and sewer treatment facility repairs, replacement and new infrastructure. For a sidewalk design, for instance, the Town may task the Offeror with preparing topographic and boundary surveys, determining necessary easements and/or right of way, managing utility relocations, negotiating with private property owners, and preparing final engineered plans for construction. Service categories are described below.

A. Architectural Design and Planning Services

The Consultant shall provide architectural services for a new or expanded Town Office, park facility or other project as needed.

B. Transportation Planning Services

The Consultant shall provide technical assistance to the Town for transportation related projects. Generally, transportation planning tasks or planning studies are used to determine the feasibility of a proposed project, and to identify and evaluate associated multimodal transportation opportunities and impacts. Work may include establishing project purpose and goals, providing an inventory of existing conditions, developing conceptual planning layouts, proposing and analyzing alternate improvements, identifying state and federal requirements

including environmental issues, performing research studies, and writing technical reports to document the study process and results.

C. Complete Streets Engineering and Design, including storm management

Complete Streets Engineering and Design work includes preparing preliminary and final street plans that accommodate full range of right-of-way users: pedestrians, bicyclists, motorists, transit riders, and motor freight. Work may include developing, reviewing, and incorporating urban design elements and concepts for street improvement projects which may include architectural and landscaping elements, Impact Design, and sustainable or “green” designs. All projects must be reviewed and approved by VDOT.

Examples of potential work tasks include, but are not limited to:

- Plans, profiles, and cut sheets for street improvements including roadway, sidewalk, and intersection design(s);
- Bicycle and transit-related facilities and parking layout;
- Storm drainage and utilities design, including permitting;
- Landscape design;
- Accessible pedestrian pathways and crosswalks;
- Street lighting, traffic signal, and traffic calming design(s);
- Signing and striping plans;
- Pavement Design;
- Maintenance of Traffic Plans for the project;
- Traffic control plans;
- Construction details and product specifications; and
- Preparation of complete bid and construction documents, including construction cost estimate.

D. Traffic Engineering Services

As the Town grows, traffic volumes and speeds on narrow right of way rural roads stresses an already substandard roadway system. The Town receives regular requests for speed reductions, limitations for trucks, traffic calming, and other means to improve the safety and functionality of the system. The Town may request traffic engineering services to addresses these concerns.

Examples of potential work tasks include, but are not limited to:

- Traffic data collection, such as traffic, pedestrian, bicycle, and transit counts, and origin-destination surveys;
- Traffic impact studies including traffic forecasting analysis;
- Traffic signal design, timing, and warrant analyses;
- Streetlight system design services;
- Crash analysis and safety studies;
- Maintenance of Traffic (MOT) plans development and review;
- Comprehensive pavement condition analysis;
- Parking planning and curb management studies
- Design of communication networks both open loop and closed loop systems including fiber network design;
- Development of traffic calming recommendations for specified locations in the Town;
- Preparation of accurate construction cost estimates and constructability reviews.
- Traffic signal upgrades and/or complete rebuilds at various locations; and
- Design of fiber optic communications and camera systems.

E. Complete Parks Planning, Engineering and Designs Services

Complete Parks Planning Engineering and Designs work includes preparing park concept plans, preliminary and final design plans. Work may include developing, reviewing, and incorporating park design elements and concepts for Town desired Park projects which may include architectural, landscaping and recreational elements with sustainable or “green” designs.

Examples of potential work tasks include, but are not limited to:

- Concept design development and revisions
- Site Plan design for new park elements
- Redesign of Park elements
- Asset Management for Park and other Town facilities

F. Complete Water and Sewer Planning, Engineering and Designs Services

Complete Water and Sewer Planning, Engineering and Designs work includes all aspects of support to the Town’s water and sewer system including developing, reviewing and designing repair, replacement and new infrastructure; support to maintaining compliance with all state and federal regulations; planning for future to ensure adequate water supply and distribution and sewer collection system.

Examples of potential work tasks include, but are not limited to:

- Study and Evaluation support for new water and sewer system needs
- Water treatment design and operations support
- Water resource protection and supply support
- Water distribution design including design of water line, a new elevated water tank, air release valves, and distribution system modeling
- Sewer treatment system design and operations support
- Sewer collection system design and modeling
- I&I reduction studies, action plan development, correction design and construction, and monitoring to confirm reduction in maintained
- Asset Management for the water and sewer systems
- Operations support to maintain regulatory compliance
- Support to any regulatory violations including correction actions

G. Project Management, Construction Management and Inspection Services

The Consultant shall serve as an extension to the Town staff to manage specific projects including transportation, park water and sewer projects. Project Management and Construction Management Services work includes assisting the Town in managing complex projects through design and construction phases.

Examples of potential work tasks include, but are not limited to:

- Capital Project Management & Engineering
- Value Engineering (VE)
- Regulatory compliance, including Federal, State, and Local permitting and contracting requirements including obtaining all needed permits for a project
- Cost estimation, including lifecycle cost analyses and benefit cost analysis
- Strategic Planning Implementation
- Funding and grants management
- Construction inspection including testing
- Construction Management

- Consultant coordination
- Project close-out activities to include as-built surveys and plans development, cost reporting, and process evaluation

H. Support Services

Town may engage the Consultant to perform one or more or all of the tasks listed under this category, on a standalone or as part of a project, based on the Town needs at time of assignment. Descriptions for these tasks are intended to be examples and not an all-inclusive listing.

1. Environmental Services

Examples of Environmental Services work tasks include, but are not limited to:

- Preparation of State Environmental Review Process (SERP) documentation, including coordination with State resource and transportation agencies;
- Studies and documentation under the National Environmental Policy Act (NEPA);
- Full range of specific cultural and natural resource studies, including hazardous materials studies and Phase 1 and Phase 2 Environmental Site Analysis; and
- Sustainability planning with respect to natural resources and energy.

2. Public Involvement

The Consultant shall assist the Town with outreach to impacted property owners. The outreach may be negotiation for easements and/or right of way; communication with neighborhoods or elected officials about the project; or preparation and presentation at public meetings.

Examples of potential work tasks include, but are not limited to:

- Website development, hosting, and maintenance
- Public meeting scheduling, organizing, facilitation, recording, and documentation
- Polling and opinion collection through surveys, interviews, and electronic means
- Developing public education campaigns including informational materials, maps, brochures, and multimedia presentations, including artwork and text
- Developing and managing stakeholder mailing lists
- Purchasing media notices and advertising
- Designing collateral materials, creating templates, newsletter layouts, computer generated presentations and other related duties.

3. Survey

The Consultant shall provide all survey support needed to any Town projects.

4. Geotechnical Services

Geotechnical Services work includes performing soil borings, creating boring logs, test cores, performing laboratory tests, and developing recommendations for appropriate

action.

Examples of potential work tasks include, but are not limited to:

Geotechnical studies and analyses to determine soil properties
Determination of ground water conditions including the presence of contaminants

5. Civil Engineering Design

Town may require assistance to provide a full range of civil engineering design services that may not be appropriately included under other Categories.

Examples of potential work tasks include, but are not limited to:

- Site Plan for new facilities including grading and drainage plans
- Planning, profiling, and detailing sheets for entrances, sidewalk, and Parking lots
- Street light foundation and retaining wall design
- Parking layouts
- General and special conditions for construction bid packages

6. Landscape Architecture and Public Art Coordination

Town may require assistance to develop, incorporate, and review streetscape, landscape, and urban design of transportation facilities or transportation-related structures.

Examples of potential work tasks include, but are not limited to:

- Conceptual, preliminary, and final landscape plans for public right-of-way
- Incorporating public art in street and transit projects
- Developing Requests for Proposals for hiring artists
- Designing and permitting integrated wayfinding systems

7. Right of Way Acquisition Services

The Consultant shall provide right of way acquisition services for construction of variety of transportation and water and sewer related projects. Typical projects may include right of way acquisition for construction of sidewalks, trails, water and sewer lines, sewer pump stations and water tanks, utility poles, turn lanes, shoulders, additional travel lanes, realignment of curves, drainage improvements, new roadway alignment and interchange modifications. Close coordination with the Virginia Department of Transportation (VDOT) is required to ensure that all applicable state and federal requirements are followed during all phases of each project, especially for those projects receiving state or federal funding. Right of Way acquisition services performed for each project assignment may include, but is not limited to, the following:

a. Basic Services

The Consultant shall be responsible for Title Reports, Administrative Reports, Appraisal Reviews, Negotiations, closing, recordation, recommendation for condemnation and related services.

b. Final Design Phase

The Consultant shall be responsible for preparation of costs for the acquisition of required right of way and easements, including any administrative costs.

c. Right of Way Phase

At the minimum, the Consultant shall be responsible for:

- Performing title research and preparation of title reports for impacted properties;
- Performing basic administrative reports and/or appraisal reviews as appropriate;
- Negotiation of settlements with impacted property owners; and
- Preparation of all closing documentation and recordation of all negotiated settlements.

8. Utility Relocation Support

The Consultant shall provide design, negotiations, and field support to any utility relocation needs required for a project.

Examples of potential work tasks include, but are not limited to:

- Conceptual, preliminary, and final design of new utility pole or underground locations
- Conceptual, preliminary and final design of private power conduit and supply for private street lights run outside the right of way in an easement
- Negotiations and documentation support for any utility relocation work.

Silence of Specifications

The apparent silence of these specifications and any supplemental specifications as to any detail or the omission from the specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

PART FIVE– PROPOSAL REQUIREMENTS

A. Instruction for Proposal Submission:

1. Proposals must be submitted in hard copy by hand in a sealed envelope no later than the time and date deadline specified in this solicitation to the address listed below. Hard copies shall include: one (1) fully executed original copy of the proposal and three (3) additional photocopies of the original, four (4) copies total. In addition, offerors must submit one (1) exact electronic copy of the original Proposal in pdf on a Compact Disc (CD) or Universal Serial Bus (USB) flash drive.

**Town of Lovettsville, Virginia
c/o Karin Fellers, Project Manager
PO 209 (mailing address)
6 East Pennsylvania Avenue (delivery address)
Lovettsville, VA 20180**

2. The offeror's proposal shall address the below areas, not exceeding the stated page limitations. The proposal shall be limited to the page size of 8 ½"x11", single space and type size shall not be less than 12-point font for each response item. Note for page-counting purposes, a page equals a one-sided sheet. If a page limit is not noted within the section below there is no page limit.
3. The exterior of the envelope or package shall indicate the name of the Offeror, the scheduled RFP opening date and time, and the name of the Request for Proposals (**On-Call Services RFP**). The Town and its officers, employees or agents shall not be responsible for the opening of a Proposal envelope or package prior to the scheduled opening, if that envelope or package is not appropriately sealed and marked as specified.
4. The original and copies of the proposals shall be labelled appropriately.
5. Timely submission of the proposal is solely the responsibility of the offeror. Proposals received after the specified date and time will be rejected. Town is not responsible for delivery attempts by vendors when the office is not open or misdirected deliveries to other offices within the Town. Please note that the Town of Lovettsville may not be in a location to guarantee receipt of morning overnight delivery and may only receive overnight delivery in the late afternoon. Offerors should plan accordingly to ensure proposals are received before the deadline.
6. Proposals and all documents related to this solicitation submitted to the Town by an offeror or a prospective offeror shall, upon receipt by the Town, become the property of the Town.
7. Electronically submitted proposals or those submitted unsealed will not be accepted.

B. Proposal Preparation and Organization:

Proposals should be prepared simply and economically, and shall provide **straightforward, concise descriptions of capabilities** with enough details to satisfy the requirements of the RFP, so that proposals can be evaluated properly. Emphasis should be on completeness and clarity of content, and elaborate artwork, expensive paper, bindings, visuals, and other presentation aids should be avoided.

Proposals shall be tabbed and organized as described herein. Failure to do so may result in a lower evaluation of the Proposal.

C. Proposal Content and Organization

Proposals shall respond fully to the RFP, and the information provided shall be organized and provided in the following order, and tabbed as follows:

1. **Proposal Form**

Proposal Form must be fully completed and signed and submitted as the first tab in the proposals or the proposals could be deemed non-responsive.

2. **Executive Summary (max. two (2) pages)**

Provide a narrative, prepared in nontechnical terms, summarizing offeror's proposal. The executive summary shall **identify category(ies)\subcategory(ies) for which offeror is submitting proposals** and summarize firm's core competencies that allows offeror to generate superior performance and service level, which identifies them among industry leaders.

3. **Table of Contents:**

The Table of Contents shall indicate the material included in the Proposal by Tab and page number.

4. **Similar Project Experience**

The offeror shall submit three (3) similar projects that were awarded to the firm by another jurisdiction (preferably similar in size to the Town of Lovettsville) for provision of services for the category(ies)\subcategory(ies) for which offerors submitting proposals. The offeror is encouraged to review the list of upcoming projects in Part Four Paragraph 2 above and wherever possible provide projects that best match projects from that list. The project must have been awarded or completed within the last five (5) years and can be a completed project or one that is ongoing. The following information must be submitted for each project:

- 1) Name of jurisdiction or governmental agency that awarded the project;
- 2) Identification of the category(ies)\subcategory(ies) of work performed;
- 3) Date of the award and what has been accomplished to date;
- 4) Scope of work and salient features of the project and discuss how client's design, economic, and operational objectives were satisfied;
- 5) Elements of the project that are similar to possible upcoming Town projects listed under the Scope of Services section above;
- 6) Type of funding sources for the project;
- 7) Initial and final duration of the project;
- 8) Initial and final award amount; and
- 9) Name of contact person that can verify the information along with his or her email address and phone number(s), inactive emails and phone numbers may cause deduction of points.

5. **Corporate Experience (max. four (4) pages)**

- a. Offeror shall provide a brief overview of the firm's planning and engineering or other related experience in category(ies)\subcategory(ies) applied for.
- b. Offerors shall describe their experience providing the services in the category(ies)/subcategory(ies) applied for on projects involving VDOT or Federal Funding.

- c. Offerors shall specify the location(s) of their main, local and branch offices and when they were established, including management and administrative structure of the company.
- d. Offerors shall describe the facilities and equipment owned by the Offeror, including computer capability, reproduction and communication equipment, laboratory and testing equipment or other specialized equipment applicable to the Scope of Services.
- e. Offerors shall describe the firm's familiarity with federal, state and local codes, requirements, standards and procedures. Elaborate on their experience and background working with federally or state funded projects, required submissions and ensuring compliance with the requirements of the donor agencies.

6. *Approach and Understanding (max. six (6) pages)*

- a. Considering one of the upcoming projects listed above that the offeror is interested in providing services to the Town under this RFP, the Offeror shall provide details to affirm their understanding of the technical requirements and the scope of services and their proposed approach to successfully complete assigned projects for the selected category(ies).
- b. Considering one of the upcoming projects listed above that the offeror is interested in providing services to the Town under this RFP, the Offeror shall detail the type and extent of project support services envisioned by them that would lead to successful CIP project delivery.
- c. Considering one of the upcoming projects listed above that the offeror is interested in providing services to the Town under this RFP, the Offeror shall describe the firm's vision in the use of low maintenance, high performance materials and equipment and identification of appropriate sustainable concepts.
- d. Considering one of the upcoming projects listed above that the offeror is interested in providing services to the Town under this RFP, the Offeror shall discuss any innovative and novel approaches, and/or ideas and solutions for common issues encountered with CIP projects, particularly in a small town with tight right of way and in a downtown situation such as the Town of Lovettsville.
- e. Offerors shall describe their quality-assurance/quality control (QA/QC) program and indicate how the program will be applied to the delivery of the required services under this RFP. The process shall include peer review process, verification of data, facts and figures related to the project and construction cost estimation, project constructability review, etc.
- f. Offerors shall include a statement indicating the firm's ability to respond on short notice and within tight timelines.

7. *Credentials of the Proposed Project Team (max. four (4) pages for the summary, plus one (1) page for the organizational chart, plus two (2) pages for each resume)*

- a. Individuals who will be directly involved in assigned tasks should have demonstrated experience to perform the work delineated in the scope of services for indicated

specialty categories. Individuals whose qualifications are presented will be committed to the assigned task for its duration unless otherwise determined by the Town's Project Officer. Where Commonwealth of Virginia registration or certification is deemed appropriate, a copy of the registration or certificate should be included in the proposal package.

- b. The key personnel and subcontractors submitted by the Offeror in its Proposal in order to qualify and if thereafter accepted by Town are considered essential to the Offeror's qualifications. After contract award, an Offeror may not replace, substitute or augment any key personnel or sub-contractor without prior written approval of the Town. A request to replace or substitute any key personnel or sub-contractor for any reason, shall be provided to the Town Contact at least fifteen (15) calendar days in advance of such proposed replacement or substitution and the request shall contain sufficient justification, including identification of the proposed substitute and their qualifications, in sufficient detail to permit evaluation by the Town.***
- c. Offerors shall describe their experience and demonstrate the qualifications of the entire project team as it relates to each selected category(ies)\subcategory(ies). Include the experience of the Offeror, the proposed Project Manager, as well as other members of the project team; i.e., additional personnel, subcontractors, branch offices, team members and other resources anticipated to be utilized for this project. Name specific projects, successfully completed within the last three (3) years, where the team members have performed similar tasks.
- d. Offerors shall submit a management plan which describes their technical abilities and resources. The plan shall describe, at a minimum, the Offeror's basic approach to the management of the project, to include reporting hierarchy of staff and subcontractors and provide details on individual(s) responsible for coordination of separate components of scope of work.
- e. Offerors shall provide:
- List of anticipated subcontractors that will be utilized and for which categories or subcategories they are providing service, including their primary contacts and office locations.
 - Resumes and listing of the name, experience and qualifications for individuals who will be responsible for the management and technical work for each category(ies)\subcategory(ies).

8. References (Maximum one (1) page)

Offerors shall provide a list of five (5) references, with contact information, preferably of other municipalities similar in size to the Town of Lovettsville and for whom the Offeror has performed work like that required by this RFP. The contact information for each reference shall include name, title, company, address, telephone number, and email address.

The contact person listed for each reference shall be someone who has personal knowledge of the Offeror's performance during a project for that reference. Contact persons must have been informed that they are being used as a reference and that the Town may be calling or emailing them. More than one person can be listed but all listed must have knowledge of the Offeror's performance regarding the specific-referenced project. DO NOT list principals or officers who will not be able to answer specific questions regarding the project or Offeror's performance. Failure of listed references to respond to the Town's inquiries may negatively impact the rating of the Proposal.

The reference shall be the owner or a representative of the owner. An owner's representative is defined as a firm or individual hired by the owner to oversee the design or construction oversight services performed by the prime Consultant. Consultants or contractors who provided services under the referenced project shall not be accepted as references unless they were hired as the owner's representative for the referenced project.

9. Appendices

The content of this tab is left to the Offeror's discretion. However, the Offeror should limit materials included here to those that will be helpful to the Town in understanding the services proposed and must contain completed forms included under Part 7 including but not limited to:

- Proposal Form
- Insurance Form
 - The Offeror, by signing and including the Insurance Checklist Form in its Proposal, acknowledges that it has read and understands the insurance requirements for the RFP.
 - The Offeror also acknowledges that evidence of required insurance coverage must be submitted within ten (10) business days (any day other than a Saturday, Sunday, Town observed holiday, or other day on which the Town is closed) following notification of his/her Proposal being accepted and that the Town may rescind its acceptance of the Offeror's Proposal upon the Offeror's failure to promptly provide the evidence of insurance.
- Signed Certificate of Non-Collusion Form
- Signed and notarized Conflict of Interest Statement Form
- Firm Data Form
- Certification Regarding Debarment Forms - Primary Covered Transactions and Lower Tier Covered Transactions

PART SIX – PROPOSAL REVIEW AND SELECTION PROCESS

A. Evaluation Criteria

Evaluation is based on the extent to which the proposal meets the requirements of this solicitation and the extent to which the offeror is likely to be able to achieve the desired results. The proposals must be complete and include all necessary information to be considered for full evaluation. Proposals determined to be complete (including all requested information) will be evaluated by the selection committee based on the following criteria listed in order of importance by the point weighting applied:

#	EVALUATION CRITERIA	WEIGHT	
		YES	NO
	DOES THE FIRM MEET THE MANDATORY REQUIREMENTS		
1	CORPORATE EXPERIENCE W/ SIMILAR LOCALITIES	100	
2	CORPORATE EXPERIENCE W/ SIMILAR PROJECTS	100	
3	METHODOLOGY AND APPROACH FOR DELIVERY OF SERVICES	100	
4	CREDENTIALS OF THE PROPOSED TEAM & ABILITY TO PROVIDE ALL CATEGORIES NEEDED FOR TOWN PROJECTS	100	
5	LOCATION OF TEAM AND ABILITY TO RESPOND IN A TIMELY FASHION	50	
6	OVERALL QUALITY AND COMPLETENESS OF PROPOSAL	25	
7	DID THE OFFEROR ATTEND THE PREPROPOSAL CONFERENCE?	25	

In addition, the Town will consider offerors exceptions to the Town's contract terms and conditions.

During oral presentation the Town will consider additional factors into its evaluation of offeror such as:

- Responsiveness to the Town's needs and instructions;
- The degree of firm's understanding of requirements, goals, objective and outcomes;
- Attention to detail and management of time allotted for the firm's presentation;
- Clarity and organization of oral presentation given;
- Inclusion of appropriate experiential projects;
- Cohesiveness of the team and communication structure among the team and with the Town;
- Ability of the Prime Offeror to provide all categories of services needed for an upcoming project, and
- Any other factor deemed appropriate based on offerors proposals and Town's review of the proposals.

B. Town's Evaluation Process

1. If less than three expressions of interests (EOIs) are received from consultants for Federal-Aid projects, the Town must contact the VDOT Project Coordinator to determine if the selection may continue.
2. At any stage during the evaluation, the Town reserves the right to waive informalities or irregularities in the procedures listed herein, if doing so is in the best interest of the Town.
3. The Town shall identify a Selection Panel to review and score the proposals and oral

presentations. This Panel may consist of Town staff and a representative from the Town's Parks, Infrastructure, Environment and Utility Committee. Each panel member will independently review and score each proposal.

4. The proposal review meeting will convene following completion of individual reviews. During this meeting each proposal will be discussed individually for its merits, some individual scores may change as the result of group discussions.
5. While reviewing the proposals, the panel members will focus entirely on the content of the proposal submitted and in accordance with the requirements set forth in this RFP.
6. After ranking of the proposals and preparation of a short list of most qualified firms, the Town may then engage in oral discussions with one or more firms. Among other things, these oral discussions may include answers to the questions from the panel members in response to the proposals submitted and/or other information deemed necessary by the review panel.
7. At the end of the oral discussion stage, the Town will select in order of preference two (2) or more Offerors whose qualifications and proposed services are deemed most meritorious for services as described in Part 4 above. Negotiations shall then be conducted by the Town in accordance with applicable laws and regulations for an On-Call Services Contract.
8. The Town will make its Contract issuance based on the offeror's submissions, negotiations, and in accordance with this RFP. The Town, at its sole discretion, reserves the right to make multiple awards under this RFP. If multiple awards are made, Task awards shall be made following the process described in Part Four Item 3.
9. The review, selection of Qualified Offerors, discussions, evaluations and negotiations of Proposals takes a considerable effort to complete, and the effort depends on the number of Proposals received. The Town will attempt to meet the RFP Schedule stated herein; however, that may not be achievable. Offerors are responsible for and advised to stay current with any information on the Town website.
10. VDOT's Assurance and Compliance Office (ACO) will conduct a pre-award evaluation for consultant (and their subs) "*professional services*" cost proposals having a value greater than \$200,000 prior to their execution. The consultant is required to submit a Federal Acquisition Regulations (FAR) audit meeting the requirements of Part 31 of Title 48 of the Code of Federal Regulations when a prime or combined prime and sub-consultant cost proposal has a value of \$200,000 or more. Pre-award evaluations are not required for off right-of-way Transportation Alternatives Projects.

PART SEVEN – PROPOSAL FORM AND ATTACHMENTS

Town of Lovettsville

REQUEST FOR PROPOSALS ON-CALL CONSULTING SERVICES

Proposal Form

THE FULL LEGAL NAME OF THE FIRM OR ENTITY SUBMITTING THIS PROPOSAL MUST BE WRITTEN IN THE SPACE PROVIDED BELOW. THIS PROPOSAL FORM, AND ALL OTHER DOCUMENTS REQUIRED BY THE SOLICITATION TO BE SUBMITTED WITH THIS PROPOSAL FORM, INCLUDING, BUT NOT LIMITED TO ALL ISSUED AMENDMENTS, MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BY A PERSON AUTHORIZED TO LEGALLY AND CONTRACTUALLY BIND THE OFFEROR, OR THE PROPOSAL MAY BE REJECTED:

SUBMITTED BY: (Legal Name Of Entity)	
FORMER NAMES: (Insert all other names that this entity has been known by in the past twenty (20) years)	
AGE OF THE ENTITY: How many Years this entity has been in business under the current name?	
PRINCIPAL PLACE OF BUSINESS:	
TELEPHONE NO.	FAX NO.
CORPORATE WEBSITE	
DUNS NUMBER:	
FORM OF OWNERSHIP: ____ CORPORATION; _____ GENERAL PARTNERSHIP; _____ UNINCORPORATED ASSOCIATION; ____ LIMITED LIABILITY COMPANY; _____ LIMITED PARTNERSHIP; _____ SOLE PROPRIETORSHIP	
WHERE THE ENTITY WAS FORMED: (INSERT NAME OF STATE) _____	
IDENTIFICATION NO. ISSUED TO THE FIRM BY SCC: If Offeror is exempt from the SCC authorization requirement, then it shall include a statement on the entity's letterhead with its application certifying their exemption from this requirement. _____	
DEBARMENT, DISQUALIFICATION AND OR SUSPENSION: Is the entity or any of its principals currently debarred, suspended or disqualified from submitting responses to the Town, or any other state, local or federal entities? _____ YES; _____ NO	

OFFEROR'S STATUS PLEASE INITIAL ONE: MINORITY OWNED; WOMAN OWNED; NEITHER
NOTE: If the answers to any questions below are yes, use additional pages to provide detailed description of the situation and or provide full documentation
CLAIMS/FINAL RESOLUTION/JUDGMENTS Have any of the following actions occurred on, or in conjunction with, any project(s) performed by the Offeror, any affiliate, or their officers, partners or directors in the last five (5) years? "Legal Actions" shall include civil or criminal litigation, administrative; Proceedings, indictments, arbitrations or the like <div style="text-align: right;">_____ YES; _____ NO</div>
TERMINATION/FAILURE TO COMPLETE Has the Offeror ever been terminated for work awarded to it? This includes termination for default (or cause) or for the convenience of the Owner? Has Offeror for any other reason failed to complete a project? <div style="text-align: right;">_____ YES; _____ NO</div>
BREACH, DEFAULT, DEBARRED: Within the last five (5) years, has Offeror been disqualified, removed, or otherwise declared in material breach or default of any contract by a public agency, or debarred from participating in the RFP process for any contract? If yes, please explain the circumstances: <div style="text-align: right;">_____ YES; _____ NO</div>
RELEASE FROM CONTRACT APPLICATION, PROPOSAL OR AWARD: Has the Offeror filed a request to be released from an Application, proposal, selection or award of any contract within the last five (5) years? If yes, please explain the circumstances. <div style="text-align: right;">_____ YES; _____ NO</div>
FAILURE TO EXECUTE A CONTRACT: Has the Offeror ever been selected for award or awarded a contract in which the entity failed to execute the contract? This would include: the entity not signing the contract documents; an inability of the company to obtain insurance requirements; or failure of the company to submit required forms and attestations. If yes, please explain the circumstances: <div style="text-align: right;">_____ YES; _____ NO</div>
BANKRUPTCY: Has the Offeror filed for bankruptcy in the last seven years or is your firm currently the debtor in a bankruptcy case? If yes, please explain the circumstances <div style="text-align: right;">_____ YES; _____ NO</div>
CONTACT PERSON AND MAILING ADDRESS FOR DELIVERY OF NOTICES Provide the name and address of the person designated by the Offeror to receive notices and other communications (Refer to the Sample Agreement for further details):

TRADE SECRETS OR PROPRIETARY INFORMATION:

Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the Offeror must identify the data and materials which need such protection prior to submission of such data and material, and state the reasons why protection is necessary. Please mark one:

(☐) **Yes**, the Application I have submitted does contain trade secrets and/or proprietary information.

(☐) **No**, the Application I have submitted does not contain any trade secrets and/or proprietary information.

If Yes, you must clearly identify below the exact data or other materials to be protected and list all applicable page numbers of the Application containing such data or materials:

STATE THE SPECIFIC REASON(S) WHY PROTECTION IS NECESSARY:

NOTE: If you fail to identify the data or other materials to be protected and state the reasons why such protection is necessary in the space provided above, you have not invoked the protection, accordingly, effectively the Application will be open for public inspection consistent with applicable law.

Town of Lovettsville

CERTIFICATION OF NON-COLLUSION:

The undersigned certifies that this Application is not the result of, or affected by, any act of collusion with another person (as defined in Code of Virginia Section 59.1-68.6 et seq.), engaged in the same line of business or commerce; or any act of fraud punishable under the Virginia Governmental Frauds Act (Code of Virginia §18.2-498.1 et seq.).

CONFLICT OF INTEREST:

The undersigned certifies and warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest, which is defined as a situation in which the nature or work under the contract and the offeror's organizational, financial, contractual or other interest are such that award of the contract may result in the offeror receiving an unfair competitive advantage, or the offeror's objectivity in performing the contract work may be impaired. The offeror agrees that if after being awarded it discovers an organizational conflict of interest with respect to the being awarded, it shall make an immediate and full disclosure in writing to the Town of Lovettsville which shall include a description of the action which the offeror has taken or intends to take to eliminate or neutralize the conflict.

INDICATE THE NAME AND CONTACT INFORMATION OF THE PERSON WHO CAN RESPOND AUTHORITATIVELY TO ANY QUESTIONS REGARDING THIS PROPOSAL (I.E. PROJECT MANAGER):

NAME (PRINTED): _____ **TITLE:** _____

E-MAIL ADDRESS: _____ **TEL. NO.:** _____

The undersigned swears or affirms under the penalty of perjury and upon personal knowledge that the contents of the Application for Prequalification are true and correct.

The undersigned swears or affirms under the penalty of perjury that the Offeror, its agents, servants and/or employees, to the best of his/her knowledge and belief, have not in any way colluded with anyone for and on behalf of the Offeror an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Offeror, or themselves, to gain any favoritism in the award of any contract resulting from this proposal.

NAME OF AND TITLE OFFEROR'S REPRESENTATIVE

SIGNATURE OF OFFEROR'S REPRESENTATIVE



CONFLICT OF INTEREST STATEMENT

I, the person whose name is subscribed below, am a duly authorized representative and agent of the entity submitting this proposal in response to its **Request for Proposal ON-CALL CONSULTING SERVICES**. On behalf of the Offeror:

Certify that neither the Offeror nor any affiliated firm(s), parent entity or subsidiary, has, within the past five (5) years, been employed by or represented a deliverer of services, which services reasonably could be expected to be considered for purchase by the Town of Lovettsville, as a result of this solicitation.

Affirm that if the Offeror awarded a contract under this solicitation, and during the term of that contract prepares an invitation to bid or request for proposal for or on behalf of the Town, the Offeror agrees that it shall not (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or Offeror information concerning the procurement which is not available to the public.

Affirm that the Offeror further agrees that it shall not solicit or accept any commissions or fees from vendors who ultimately furnish services to the Town as a result of services furnished by the Offeror under any contract award made as a result of this solicitation.

FIRM'S NAME: _____

SIGNED BY: _____ **DATE:** _____

NOTARY STATEMENT

COMMONWEALTH OF VIRGINIA / STATE OF _____)

TOWN/COUNTY OF _____) to wit:

I, the undersigned Notary Public in and for the State and County of aforesaid, hereby certify that on _____, 201_, _____, known to me (or satisfactorily proven) to be the person whose name is subscribed above, appeared before me as an agent of the Offeror and acknowledged that he/she has executed the same for the purposes therein contained.

(Seal)

Notary registration number: _____

My commission expires: _____

INSURANCE FORM

CERTIFICATE OF INSURANCE MUST SHOW ALL COVERAGE AND ENDORSEMENTS INDICATED BY "X"

COVERAGES REQUIRED			LIMITS (FIGURES DENOTE MINIMUMS)
X	1	WORKERS' COMPENSATION	STATUTORY LIMITS OF VIRGINIA
X	2	EMPLOYER'S LIABILITY	\$100,000 ACCIDENT, \$100,000 DISEASE, \$500,000 DISEASE POLICY LIMIT
X	3	COMMERCIAL GENERAL LIABILITY(CGL)	\$2,000,000 CSL BI/PD EACH OCCURRENCE, \$4 MILLION ANNUAL AGGREGATE
X	4	PREMISES/OPERATIONS	\$500,000 CSL BI/PD EACH OCCURRENCE MILLION ANNUAL AGGREGATE
X	5	AUTOMOBILE LIABILITY	\$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
X	6	OWNED/HIRED/NON-OWNED VEHICLES	\$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
X	7	INDEPENDENT CONTRACTORS	\$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
	8	PRODUCTS LIABILITY	\$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	9	COMPLETED OPERATIONS	\$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	10	CONTRACTUAL LIABILITY (MUST BE SHOWN ON CERTIFICATE)	\$500,000 CSL BI/PD EACH OCCURRENCE
	11	PERSONAL AND ADVERTISING INJURY LIABILITY	\$1 MILLION EA. OFFENSE, \$2 MILLION ANNUAL AGGREGATE
X	12	UMBRELLA LIABILITY	\$3 MILLION BODILY INJURY, PROPERTY DAMAGE AND PERSONAL INJURY
X	13	PER PROJECT AGGREGATE	\$1 MILLION PER OCCURRENCE/CLAIM
X	14	PROFESSIONAL LIABILITY	\$1,000,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
		A ARCHITECTS AND ENGINEERS	\$1 MILLION PER OCCURRENCE/CLAIM
		B ASBESTOS REMOVAL LIABILITY	\$2 MILLION PER OCCURRENCE/CLAIM
		C MEDICAL MALPRACTICE	\$1 MILLION PER OCCURRENCE/CLAIM
		D MEDICAL PROFESSIONAL LIABILITY	\$1 MILLION PER OCCURRENCE/CLAIM
	15	MISCELLANEOUS E&O	\$1 MILLION PER OCCURRENCE/CLAIM
	16	MOTOR CARRIER ACT END. (MCS-90)	\$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
	17	MOTOR CARGO INSURANCE	
	18	GARAGE LIABILITY	\$1 MILLION BODILY INJURY, PROPERTY DAMAGE PER OCCURRENCE
	19	GARAGE KEEPERS LIABILITY	\$500,000 COMPREHENSIVE, \$500,000 COLLISION
	20	INLAND MARINE-BAILLIE'S INSURANCE	\$
	21	MOVING AND RIGGING FLOATER	ENDORSEMENT TO CGL
	22	DISHONESTY BOND	\$
	23	BUILDER'S RISK	PROVIDE COVERAGE IN THE FULL AMOUNT OF CONTRACT
	24	XCU COVERAGE	ENDORSEMENT TO CGL
	25	USL&H	FEDERAL STATUTORY LIMITS
X	26	CARRIER RATING SHALL BE BEST'S RATING OF A-VII OR BETTER OR ITS EQUIVALENT	
X	27	NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL CHANGE IN COVERAGE SHALL BE PROVIDED TO THE TOWN AT LEAST 30 DAYS PRIOR TO ACTION	
X	28	THE TOWN SHALL BE AN ADDITIONAL INSURED ON ALL POLICIES EXCEPT WORKERS COMPENSATION, PROFESSIONAL LIABILITY, AND AUTOMOBILE LIABILITY	
X	29	CERTIFICATE OF INSURANCE SHALL SHOW SOLICITATION NUMBER AND TITLE	

INSURANCE AGENT'S STATEMENT:

I have reviewed the above requirements with the offeror named below and have advised the offeror of required coverages not provided through this agency.

AGENCY NAME: _____ AUTH. SIGNATURE: _____

OFFEROR'S STATEMENT:

If awarded the Contract, I will comply with contract insurance requirements.

OFFEROR NAME: _____ AUTH. SIGNATURE: _____

FIRM DATA SHEET

Funding: ____ (S=State F=Federal)

ProjectNo.: _____

Division: _____

EOI Due Date: _____

The prime consultant is responsible for submitting the information requested below on all firms on the project team, both prime and all subconsultants. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit all of the required data will result in the Expression of Interest not being considered.

Firm's Name and Address	Firm's DBE/SWAM Status *	Firm's Age	Firm's Annual Gross Receipts

* YD = DBE Firm Certified by DMBE

N = DBE/SWAM Firm Not Certified by DMBE

YS = SWAM Firm Certified by DMBE.

NA = Firm Not Claiming DBE/SWAM Status

Indicate whether small, woman-owned, or small business.

DMBE is the Virginia Department of Minority Business Enterprise

CERTIFICATION REGARDING DEBARMENT
PRIMARY COVERED TRANSACTIONS
(To be completed by a Prime Consultant)

Project: _____

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1) b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the offeror for contracts to be let by the Commonwealth Transportation Board.

Signature	Title
-----------	-------

Date _____

Name of Firm _____

CERTIFICATION REGARDING DEBARMENT
LOWER TIER COVERED TRANSACTIONS
(To be completed by a Sub-consultant)

Project: _____

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the offeror for contracts to be let by the Commonwealth Transportation Board.

Signature Title

Date

Name of Firm

USDOT 1050.2

APPENDIX A

During the performance of this contract, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Virginia Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Virginia Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Virginia Department of Transportation shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract. or procurement as the Virginia Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Virginia Department of Transportation to enter into such litigation to protect the interests of the Virginia Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

USDOT 1050.2

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities;

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

PART EIGHT – SAMPLE AGREEMENT

FOLLOWING THIS PAGE IS THE AGREEMENT THAT WILL BE ENTERED INTO BETWEEN THE TOWN AND THE CONSULTANT. THE AGREEMENT IS PART OF THIS SOLICITATION. THIS AGREEMENT IS SUBJECT TO REVIEW BY THE TOWN ATTORNEY PRIOR TO BEING SUBMITTED FOR CONSULTANT'S SIGNATURE.

TOWN OF LOVETTSVILLE, VIRGINIA

**TOWN OFFICE
PO Box 209 (mailing address)
6 East Pennsylvania Ave (delivery address)
Lovettsville, VA 20180**

AGREEMENT NO. [REDACTED]

1. AGREEMENT

This Agreement, including all Contract Documents incorporated herein, is made by and between [REDACTED], a [Corporation, General Partnership, Limited Liability Company, etc.] authorized to do business in the Commonwealth of Virginia, with a principal place of business located at [REDACTED] ("Consultant") and the Town of Lovettsville, Virginia, a Virginia municipal corporation and owner, hereinafter called ("the Town") (collectively, the "parties"). The Town and the Consultant, for the consideration hereinafter specified, agree as follows:

2. CONTRACT DOCUMENTS

The Contract Documents include the following:

- Agreement, and all modifications properly incorporated into the Agreement;
- Exhibit A – Scope of Work;
- Exhibit B – Contract Rates and Budget;
- Exhibit C – Federal Highway Administration & Virginia Department of Transportation Provisions and Requirements; and
- Exhibit D - RFP No. [REDACTED]; and
- Task Order(s) issued pursuant to this Agreement.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents, however, in the event of conflict, the terms and provisions of Exhibit C shall prevail over the terms and provisions of Exhibits A, B, D and this Agreement and any Task Order. Exhibits A and D and any Task Order are complementary to each other and, in case of conflict, the most stringent requirement or criteria shall prevail. In like manner Exhibit A and D and any Task Order shall prevail over Exhibit B in the event of conflict.

The Contract Documents set forth the entire Agreement between the Town and the Consultant. The Town and the Consultant agree that no representative or agent of either of them has made any representation or promise with respect to the parties' Agreement that is not contained in the Contract Documents. The Contract Documents may be referred to herein as the "Contract" or "Agreement."

3. SCOPE OF WORK

The Consultant agrees to perform the services described in the Contract Documents (alternatively, the "Work"). The primary purpose of the Work is to provide [REDACTED] on an as necessary basis for up to a five (5) year period. The Scope of Work is more fully described in Exhibit A. The Contract Documents set forth the minimum Work estimated by the Town and the Consultant to be necessary to complete the Work. It shall be the Consultant's responsibility, at the Consultant's sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Consultant's responsibility to manage the details and execution of its Work.

4. STANDARD OF CARE

In performing or furnishing the services required hereunder, the Consultant and all its agents, shall exercise the degree of skill and care normally accepted as professional practices and procedures by members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care").

5. RESPONSIBILITY OF THE CONSULTANT

The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all materials produced and other services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in the Work, which are discovered within a twelve-month period of final completion of the Work.

6. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

The Town's review, approval, or acceptance of, or payment for, any portion of the Work shall not be construed to operate as a waiver by the Town of any rights or of any cause of action arising out of the Contract. The Consultant shall be and remains liable to the Town for the accuracy and competency of its Work within the Customary Standard of Care.

7. ADJUSTMENTS FOR CHANGE IN SCOPE

The Town may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claims may be made by the Consultant that the scope of the Work or Task Order, or that Consultant's services, have been changed or require adjustments in the amount of compensation due the Consultant unless such adjustments have been made by a written amendment to the Contract signed by the Town and the Consultant. If the Consultant believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the Consultant, the Consultant must notify the Project Manager in writing within two (2) days after occurrence of the event giving rise to the alleged change and prior to commencement of performance of the alleged change to the Work. Within fourteen (14) days, the Consultant must provide to the Project Manager a written statement of the amount of additional compensation claimed, together with the basis therefor and documentation supporting the claimed amount. The Consultant will not be compensated for performing any work unless notice and a proposal complying with this paragraph have been submitted within the time specified above and a written Change Order has been signed by the Town and the Consultant covering the expected cost of such goods or services. The Town's rejection of a timely noticed and submitted change order proposal shall constitute an event giving rise to the Consultant's right to submit a claim in accordance with Paragraph 41 below. Notwithstanding any dispute, however, the Consultant shall have a duty to proceed with work as directed by the Town.

8. ADDITIONAL SERVICES

The Consultant shall not be compensated for any goods or services provided except those included in Exhibit A or a Task Order and included in the Contract Amount, or a Change Order signed by the Town and the Consultant has been issued to cover the expected cost of such goods or services.

Additional services agreed upon by the parties will be billed at the rates set forth in Exhibit B, unless otherwise agreed by the parties in writing.

9. ACCURACY OF CONSTRUCTION COST ESTIMATES

The Consultant shall create and provide to the Town detailed construction drawings, specifications and solicitation documents that will be sufficient for the Town to obtain competitive bids that will fall within ten percent (10%) of the Consultant's prepared cost estimates that was accepted by the Town. This amount shall be referred to as the Not-to-Exceed Construction cost. If the lowest competitive bid exceeds the Not-to-Exceed Construction cost, and the Town negotiations with the lowest responsive and responsible bidder fails to result in a price within the Not-to-Exceed Construction cost, the Consultant shall redesign the Project and provide revised construction drawings and specifications at no additional cost to the Town for a re-bid that will result in competitive bids that fall within the Not-to-Exceed Construction cost.

The Consultant final cost estimate shall commensurate with the level of design approved by the Town. The Consultant shall submit a cost estimate at completion of Schematic Design and 75% Construction Documents. If any such cost estimate indicates a potential problem in securing a bid within the Town's construction budget, the Consultant shall notify the Town and shall work with the Town to redefine the design concepts of space utilization, building efficiencies, materials of construction, etc., so that the estimated cost of construction does not exceed the budget. Substantial changes in the project scope, such as those which affect the area or function of the proposed facility must be justified by the Consultant and approved by the Town Project Officer.

10. PROJECT MANAGER

The performance of the Consultant required by this Agreement is subject to the review and approval of the Town Project Manager who shall be appointed by the Town Manager.

11. CONTRACT TERM

The Work shall commence upon execution of this Agreement by the Town and shall continue for a twelve (12) month period ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents. Upon satisfactory performance by the Consultant and with the concurrence of the Consultant, the Town may, through issuance of an amendment executed by the parties, authorize continued operations of the Consultant under the same contract unit prices for not more than four (4) additional twelve (12) month periods. (Each such period shall be referred to as a "Subsequent Contract Term").

12. CONTRACT AMOUNT

The Town will pay the Consultant in accordance with Paragraph 14 below (Payment), and Exhibit B for the Consultant's completion of the Work for the individual project assignment(s) described and required in the Contract Documents. The Consultant agrees that it shall complete the Work for the total Contract Amount specified in this section unless such amount is modified as provided in this Agreement. The Contract Amount includes all of the Consultant's overhead and fees (profit).

This is a requirements contract and the total project fee for any Task Order (including any modifications) shall not exceed \$500,000. The sum of all assignment fees in any given contract year shall not exceed \$1,500,000. The Town reserves the right to issue separate solicitation (s) for project (s) determined to be in the best interest of the Town.

13. ADJUSTMENT(S) FOR FIXED BILLABLE RATES

- A. The Contract unit price(s) shall remain firm for the first thirty-six (36) months of the Contract Term. The Contract unit price(s) for each Subsequent Contract Term, if the Town elects to extend the Contract, shall be negotiated by the Town and the Consultant.
- B. The unit prices of labor cost for each Subsequent Contract Term shall be determined by the Town as hereinafter described in this paragraph. Any percentage of increase or decrease in negotiated prices for Subsequent Contract Terms shall not exceed: i) the percentage increase or decrease of the U.S. Department of Labor, Employment Compensation (Not Seasonally Adjusted): Employment Cost Index, for Total Compensation for all workers (Table 4) the twelve (12) month period ending in December of each Contract Year; or ii) five percent (5%); whichever percentage is lower.
- C. If the Consultant and the Town do not agree on a contract amount for a Subsequent Contract Term using the procedure set forth above by the ninetieth (90th) calendar day prior to the final day of any Subsequent Contract Term, the Town may in its sole discretion terminate the Contract whether or not the Town has previously elected to extend the term.
- D. The Contract Amount/Unit Price that changed as a result of this procedure shall become effective on the anniversary date of the Contract and shall be binding on the parties for the next Subsequent Contract Term.

14. PAYMENT TERMS

Payments (net of retainage, if applicable) shall be made after the satisfactory performance of the Work in accordance with the provisions of the Contract. Unless otherwise stated, the Town will pay the Consultant within forty-five (45) days of the date of receipt of a correct, monthly invoice, as determined and approved by the Project Manager, listing the services performed and/or the goods delivered and accepted by the Town. The Town's Task Order number shall appear on all invoices. The Town reserves the right to withhold any or all payments or portions thereof if the Consultant fails to perform in accordance with the provisions of the Contract or any modifications thereto. The Town will not pay for work not performed or goods not received and accepted.

Invoices for payment shall be emailed to the following email address: Kfellers@lovettsvilleva.gov.

Failure to submit invoices to said email address may result in delays in payment.

15. REIMBURSABLE AND TRAVEL-RELATED EXPENSES

Approved travel-related expenses will be reimbursed in accordance with rules and regulations of the United States Office of Management and Budget (OMB) and the Virginia Department of Transportation (VDOT) Guidelines. The total amount for such expenses shall not exceed the amount identified in Exhibit B.

No expenses except those identified in Exhibit B of this Contract will be reimbursed.

Payments for approved reimbursable expenses and travel-related expenses will be made within forty-five (45) calendar days after receipt by the Project Manager of a correct invoice identifying the nature of the expense. Reimbursable expenses allowed shall be charged to the Town on a unit price basis at the Consultant's cost. All amounts paid for reimbursable and travel-related expenses shall be considered part of the Contract Amount.

16. PAYMENT OF SUBCONTRACTORS

The Consultant is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Consultant by the Town for Work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for its proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the Town and the subcontractor, in writing, of the Consultant's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Consultant is obligated to pay interest to the subcontractor on all amounts owed by the Consultant to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Consultant of payment from the Town for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b. above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Consultant shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Consultant's obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of the Town. A Contract Modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

17. EMPLOYMENT DISCRIMINATION BY CONSULTANT PROHIBITED

During performance of this Contract, the Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that the Consultant is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Consultant will comply with the provisions of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in employment and

mandates their full participation in both publicly and privately-provided services and activities.

- E. The Consultant will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that these provisions will apply to each subcontractor or vendor.

18. REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL AND SUBCONTRACTORS

The key personnel and subcontractors submitted by the Consultant in its Proposal in order to qualify and, if thereafter accepted by Town, are considered essential to the Consultant's qualifications. After Contract Award, the Consultant may not replace, substitute or augment any key personnel or subcontractor without prior written approval of the Town. A request to replace or substitute any key personnel or subcontractor for any reason shall be provided to the Project Manager at least fifteen (15) calendar days in advance of such proposed replacement or substitution and the request shall contain sufficient justification, including identification of the proposed substitute and their qualifications, in sufficient detail to permit evaluation by the Town.

19. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Consultant acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

20. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONSULTANT

During the performance of this Contract, the Consultant agrees to: (i) provide a drug-free workplace for the Consultant's employees; (ii) post in conspicuous places, available to employees and bidders for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Consultant's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Consultant that the Consultant maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Consultant by the Town, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

21. UNSATISFACTORY WORK

If any of the work done, or material, goods, or equipment provided, by the Consultant, fails to conform to the requirements of the Contract or is otherwise defective, the Consultant shall, upon being notified by the Town, immediately remove at the Consultant's expense such nonconforming or defective work, material, goods, or equipment and replace the same with work, material, goods, or equipment that conform to the requirements of the Contract and is not otherwise defective. In the event the Consultant fails to do so within fifteen (15) days after receipt of written notice, the Town shall have the right, but not the obligation, to remove or replace the defective or nonconforming work, material, goods, or equipment at the expense of the Consultant. This paragraph applies during the Contract term and during any warranty or guarantee period. At its discretion, the Town shall be entitled to offset such expense against any sums owed by the Town to the Consultant under this Contract. If the

Project Manager and the Town deem it expedient not to require correction or replacement of the work which has not been done in accordance with the Contract, an appropriate credit adjustment to the Contract Amount may be made therefore.

22. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Town shall have the right to terminate this Contract prior to expiration of the Initial Contract Term (or Subsequent Contract Term) if the Consultant is in breach or default or has failed to perform satisfactorily the Work required, as determined by the Town in its discretion.

If the Town determines that the Consultant has failed to perform satisfactorily, then the Town will give the Consultant written notice of such failure(s) and the opportunity to cure such failure(s) ("Cure Notice") at least fifteen (15) days before any termination of the Contract may take effect ("Cure Period"). If the Consultant fails to cure within the Cure Period or as otherwise specified in the notice, the Consultant's right to proceed with the Work remaining in the Contract may be terminated by written Notice of Termination for the Consultant's failure to provide satisfactory Contract performance. Termination is effective upon the Consultant's receipt of the Notice of Termination or proof of delivery to the Consultant's last known address. Upon such termination, the Consultant may apply for compensation for Contract services satisfactorily performed by the Consultant and allocable to the Contract and accepted by the Town prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the Project Manager within fifteen (15) days after the Termination. The Town may accept or reject, in whole or in part, the application for Termination Costs and notify the Consultant of the same within a reasonable time thereafter. No Termination Costs will be considered unless and until all costs to complete Consultant's Work have been accounted for and either offset against any Termination Costs or otherwise recovered from the Consultant.

Upon any termination pursuant to this section, the Consultant shall be liable to the Town for all costs incurred by the Town after the effective date of termination, including costs required to be expended by the Town to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Consultant or its subcontractors. Such costs shall be either deducted from any amount due the Consultant or promptly paid by the Consultant to the Town upon demand by the Town. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the Town, and the Town shall be entitled to recover, all damages to which the Town is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, delay damages, replacement costs, Consultant and all attorney fees and costs incurred by the Town to enforce any provision of this Contract.

Except as otherwise directed by the Town in the Notice of Termination, the Consultant shall stop work on the date of receipt of Notice of the Termination or other date specified in said notice, place no further orders or subcontracts for materials, services, or facilities, except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Consultant.

In the event any termination under this provision for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a termination for convenience subject to the provisions of Paragraph 23 below.

23. TERMINATION FOR THE CONVENIENCE OF THE TOWN

The performance of Work under this Contract may be terminated by the Project Manager in whole or in part whenever the Project Manager shall determine that such termination is in the Town's best interest. Any such termination shall be accomplished by the delivery to the Consultant of a written notice of termination for convenience at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Consultant will be entitled to receive compensation for all Contract services satisfactorily performed by the Consultant and allocable to the Contract and accepted by the Town prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profit.

After receipt of a notice of termination for convenience, and except as otherwise directed, the Consultant shall stop all designated work on the date of receipt of the notice of termination for convenience or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities, except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the Town; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

24. INDEMNIFICATION

The Consultant covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the Town, including the Town's elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "Town Indemnitees") from and against any and all claims made by third parties or by the Town Indemnitees to the extent of any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure resulting from, arising out of, or in any way connected with the Consultant's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the Town Indemnitees, the Consultant fails or refuses to fulfill its obligations contained in this section, the Consultant shall be liable for and reimburse the Town Indemnitees for any and all resulting expenses, including but not limited to, reasonable attorney's fees incurred, and any settlements or payments made. The Consultant shall pay such expenses upon demand by the Town Indemnitees and any failure to do so may result in such amounts being withheld from any amounts otherwise due to Consultant under this Contract.

25. INTELLECTUAL PROPERTY INDEMNIFICATION

The Consultant warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask work and trademark) of third parties are or will be infringed or in any manner involved in or related to the services provided hereunder.

The Consultant further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the Town Indemnitees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the Town. If the Consultant, or any of its employees or subcontractors, uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive any termination of this Contract. If, after

notice by the Town Indemnitees, the Consultant fails or refuses to fulfill its obligations contained in this section, the Consultant shall be liable for and reimburse the Town Indemnitees for any and all expenses, including but not limited to, reasonable attorney's fees incurred, and any settlements or payments made. The Consultant shall pay such expenses upon demand by the Town Indemnitees and failure to do so may result in such amounts being withheld from any amounts due to Consultant under this Contract.

26. COPYRIGHT

The Consultant hereby irrevocably transfers, assigns, sets over and conveys to the Town all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Consultant further agrees to execute such documents as the Town may request to accomplish such transfer or assignment.

Further, the Consultant agrees that the rights granted to the Town by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Consultant's remedy in the event of termination of, or dispute over the terms of, this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless the Town approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Consultant for work related to Work pursuant to this Contract.

27. OWNERSHIP AND RETURN OF RECORDS

This Contract confers no ownership rights to the Consultant nor any rights or interests to use or to disclose the Town's data or inputs.

The Consultant agrees that all Instruments of Service, including drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Consultant or its subcontractors as a result of the Town's request for services under this Contract, are the exclusive property of the Town ("Record" or "Records"), and all such Records shall be provided to and/or returned to the Town upon request, completion, termination, or cancellation of this Contract. The Consultant shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of the Town. Additionally, the Consultant agrees that any information defined as confidential in Paragraph 28 below, or any Records the Town may designate as confidential shall be treated as Confidential Records. Neither Confidential Records nor their contents shall be released by the Consultant, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Manager or his or her designee. The Consultant agrees that all oral or written inquiries from any person or entity regarding the status of any Record designated as confidential and generated as a result of the existence of this Contract shall be referred to the Project Manager or his or her designee for response. At the Town's request, the Consultant shall deliver all Records to the Project Manager, including "hard copies" of computer records. At the Town's request, Consultant shall destroy all computer records created as a result of the Town's request for services pursuant to this Contract, subject to the requirements of Paragraph 36 herein and terms of any document retention policy of the Consultant, provided Consultant submits said policy to the Town within fifteen (15) days of Contract Award and only to the extent the Town approves said policy.

The Consultant agrees to include the provisions of this section as part of any contract or agreement the Consultant enters into with subcontractors or other third parties for work related to the Work required by this Contract.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

28. CONFIDENTIAL INFORMATION

The Consultant, and its employees, agents, and subcontractors, hereby agree to hold as confidential all Town information obtained as a result of its Work under this Contract and designated as confidential pursuant to Paragraph 27 above and all nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Consultant shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

29. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference all Commonwealth of Virginia or federal laws related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Consultant certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value.

30. TOWN EMPLOYEES

No employee of the Town shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom that is not available to the general public.

31. FORCE MAJEURE

Neither the Town nor the Consultant shall be held responsible to each other for failure to perform their respective duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an Act of God that makes performance impossible or illegal ("Force Majeure Event"). In said case, Consultant shall be granted a noncompensable time extension for completion of the Work that is equal to the delay to the critical path of the Project that results from the Force Majeure Event.

32. AUTHORITY TO TRANSACT BUSINESS

The Consultant shall, pursuant to Code of Virginia §§ 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. In the event the Consultant enters into this Contract in violation of this requirement, this Contract shall be rendered voidable at the sole option of the Town and without cost or expense to the Town.

33. RELATION TO THE TOWN

The Consultant is an independent contractor, and neither the Consultant nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the Town. The Town will not be legally responsible for any negligence or other wrongdoing by the Consultant, its employees, servants or agents. The Town will not withhold from payments to the Consultant any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Consultant or its employees, servants or agents. Furthermore, the Town will not provide to the Consultant any insurance coverage or other benefits, including workers' compensation, normally provided by the Town for its employees.

34. NOT USED.

35. REPORT STANDARDS

Reports or written material prepared by the Consultant in response to the requirements of this Contract or a request of the Project Manager shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall not contain errors, and shall be submitted for advance review and comment by the Project Manager in a format approved by the Project Manager. The cost of revisions required to bring the report or written material into compliance shall be borne by the Consultant.

36. AUDIT

The Consultant agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The Town or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term or any Subsequent Contract Term.

37. ASSIGNMENT

The Consultant shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the Town.

38. INSOLVENCY OF CONSULTANT

It is recognized that if the Consultant is adjudged a bankrupt, makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of creditors on account of the Consultant's insolvency, such circumstance could impair or frustrate the Consultant's performance of this Contract. Accordingly, the parties to this Contract agree that upon the occurrence of any such event, the Town shall be entitled to request of the Consultant, or its successor in interest, adequate assurances of future performance in accordance with the terms and conditions of the Contract Documents, and any applicable provision(s) of the Bankruptcy Code, and the Consultant shall have seven (7) business days to provide such assurances. The Consultant's failure to comply with such request shall entitle the Town to terminate this Contract immediately and to the accompanying rights thereunder.

39. AMENDMENTS

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Consultant and the Town.

40. TOWN OF LOVETTSVILLE ORDINANCE AND VIRGINIA PUBLIC PROCUREMENT ACT

Notwithstanding any provision to the contrary herein, no ordinance of the Town of Lovettsville or provision of the Virginia Public Procurement Act or any applicable Town policy is waived in whole or in part. Said requirements prevail over any requirement of this Contract in the event of conflict.

41. DISPUTE RESOLUTION

- A. The resolution of disputes hereunder shall be governed by Sections 2.2-4363 and 2.2-4364 of the Code of Virginia (1950). Any dispute between Consultant and the Town concerning a question of fact as a result of this Agreement, which is not disposed of by mutual agreement, shall be decided by the Town Manager, who is hereby designated as the Town's authorized representative ("Town Representative") and who shall reduce his/her decision to writing and mail or otherwise forward a copy thereof to Consultant within ninety (90) days of the Consultant's submission of its claim. The decision of the Town Representative shall be final and conclusive unless Consultant appeals within six (6) months of the date of the final written decision by instituting appropriate legal action. Consultant may not institute legal action prior to receipt of the Town's decision on the claim, unless the Town fails to render such decision within the time specified.
- B. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of Consultant's intention to file such claim shall have been given at the time of the occurrence or the beginning of the work upon which the claim is based.
- C. Consultant shall not institute any legal action until the requirements set forth above have been met.

42. INCORPORATION OF FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) PROVISIONS AND REQUIREMENTS

This Contract is subject to certain provisions required by the U. S. Federal Highway Administration (FHWA) and the Virginia Department of Transportation (VDOT) as set forth in their Nondiscrimination provision, Race-Neutral DBE goal, FHWA 1273 Memorandum and CFR Change and Equal Employment Opportunity (Executive Order 11246, SF030Af-0708), which are attached as Exhibit C. Anything to the contrary notwithstanding, all FHWA and VDOT mandated terms shall be deemed to control in the event of a conflict with any other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Town requests that would cause the Town to be in violation of the FHWA or VDOT terms and conditions.

The Consultant agrees to include these clauses in each subcontract agreement awarded as result of this Agreement. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provision.

43. VIRGINIA UNIFORM STATEWIDE BUILDING CODE

All improvements or construction of Town buildings and facilities shall be designed in compliance with the most current edition of the Virginia Uniform Statewide Building Code (VUSBC). The cover sheet of all plans developed shall clearly indicate this requirement and shall indicate the applicable edition of the VUSBC utilized by the designer.

44. ADA COMPLIANCE

The Consultant shall ensure that all services provided under this Agreement are completed in accordance with the requirements of the Americans with Disabilities Act (ADA) and any other applicable regulations and standards. The parties agree that ADA compliance is a vital part of this Contract.

The Consultant shall monitor Work performed by the construction contractor during the construction phase and inform the Town and construction contractor of any Work performed that does not conform with the ADA or other applicable requirements, to enable corrective action to be taken.

The Consultant shall defend and hold the Town harmless from any expense or liability arising from the Consultant's non-compliance with accessibility requirements under the ADA, and other applicable regulations and standards, under this Agreement. The Consultant shall be responsible for all costs related to permitting delays, redesign, corrective work, and litigation relating to such non-compliance.

Neither the Town, nor any Town staff or their third-party inspection services, are responsible for verifying the design is in compliance with Contract Documents, the ADA, or other applicable requirements.

45. SAFETY

The Consultant shall comply with, and ensure that the Consultant's personnel and subcontracted personnel comply with, all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, the standards of the Virginia Occupational Safety and Health program of the Department of Labor, the Federal Environmental Protection Agency standards and the applicable standards of the Virginia Department of Environmental Quality.

46. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Loudoun County, Virginia, and in no other court. In performing its work under this Contract, the Consultant shall comply with applicable federal, state, and local laws, ordinances and regulations.

47. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

48. NONEXCLUSIVITY OF REMEDIES

All remedies available to the Town under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the Town at law or in equity.

49. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

50. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Contract.

51. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the Town pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the Town. The parties intend for this provision to be read as broadly as possible.

52. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections, if included in this Contract, also survive: INDEMNIFICATION; RELATION TO TOWN; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; AND CONFIDENTIAL INFORMATION.

53. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

54. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

55. NOTICES

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered by an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONSULTANT:
REFER TO THE PROPOSAL FORM OF THE CONSULTANT

TO THE TOWN:
Karin Fellers, Project Manager
kfellers@lovettsvilleva.gov
(540) 822-5788

AND

[INSERT CONTACT INFORMATION]

56. NON-DISCRIMINATION NOTICE

The Town does not discriminate against faith-based organizations.

57. INSURANCE

- a. The contractor will maintain a general liability policy with \$1,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The insurer must list The Town of Lovettsville as an additional insured. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient.
- b. The contractor will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the contractor to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. The contractor will also carry employers liability insurance with a limit of at least \$100,000 bodily injury by accident/\$500,000 bodily injury by disease policy limit/\$100,000 bodily injury by disease each employee.
- c. The contractor will maintain automobile liability insurance with limits of at least \$1,000,000. The coverage is to be written with a symbol "1". The insurer must be licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better.
- d. The contractor will maintain professional liability insurance with a limit of at least \$1,000,000. It is preferred that the coverage be on an occurrence basis. If the policy is on a claims made basis, this should be noted. If the contractor has professional liability insurance on a claims made basis, agreement must be made that coverage will be maintained for at least three years beyond the expiration date of the policy in force at the time of this contract. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better. The Town of Lovettsville should be listed as an additional insured on the policy. The endorsement must be issued by the insurance company.
- e. A notation on the certificate of insurance is not sufficient. (NOTE: This is only needed when professional services are being conducted by the contractor. For example if the contractor is providing professional advice or design work, the professional liability coverage should be required.)
- f. The contractor will maintain builders risk coverage on a replacement cost basis for the duration of the contract. The limit will be the full replacement cost of the building and/or structures being built under this

contract. The Town of Lovettsville will be listed as an insured under this policy to protect any property owned at the construction site.

- g. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better.
- h. The contractor will maintain a surety bond in an amount not less than the total amount payable to the contractor for the terms of this contract. The bond will be issued by a company licensed to issue surety bonds in the Commonwealth of Virginia and has an A. M. Best rating of A- or better. (NOTE: A surety bond is not needed for short term or low value contracts.)

With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of coverage. All wording limiting the insurer responsibility to notify the Town of Lovettsville Project Manager of any cancellation or non-renewal of the coverage must be removed. Exceptions may be requested in writing and are subject to the review of the Town of Lovettsville.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first aforesaid.

CONSENTED and AGREED TO BY:

TOWN OF LOVETTSVILLE, VIRGINIA

CONTRACTOR

By: _____

Robert Ritter
Town Manager

Date: _____

By: _____

Signature of Authorized
Agent or Principal

Name of Authorized
Agent or Principal

Date: _____

APPROVED AS TO FORM

By: _____

TOWN ATTORNEY
Town Legal Counsel

Date: _____

PART NINE – FEDERAL HIGHWAY ADMINISTRATION & VIRGINIA DEPARTMENT OF TRANSPORTATION PROVISIONS AND REQUIREMENTS

EXHIBIT C

FEDERAL HIGHWAY ADMINISTRATION & VIRGINIA DEPARTMENT OF TRANSPORTATION PROVISIONS AND REQUIREMENTS

Nondiscrimination Provision

Federally Funded Projects

Construction contractors and consultants agree to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e). Title VI of the Civil Rights Act of 1964 declares it to be the policy of the United States that discrimination on the grounds of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments, agencies, and subrecipients to take action to carry out this policy. Title VII of the Civil Rights Act prohibits discrimination against any employee or applicant for employment on the basis of race, religion, color, sex or national origin for employers with 15 or more employees. The contractor/consultant further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibits discrimination on the basis of age and FHWA 1273 required contract provisions for federal-aid construction projects. 49 CFR Parts 21, 23, 26, and 27, and 23 CFR Parts 200, 230, and 633 are incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The contractor/consultant shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia, as amended, the terms of which are incorporated herein by reference.

Race-Neutral DBE Goal

It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded contracts. A list of certified DBE firms is maintained on the Department of Small Business and Supplier Diversity's web site (www.sbsd.virginia.gov) under the **DBE Directory of Certified Vendors**. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential subconsultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited.

VDOT is also required to capture DBE and SWaM payment information on all contracts. The successful prime consultant will be required to complete C- 63 form for both state and federally funded projects on a quarterly basis.

Any DBE or SWaM firm must become certified (with the Department of Small Business and Supplier Diversity) prior to your response being submitted. If DBE or SWaM firm is the prime contractor, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE or SWaM subconsultants. DBE or SWaM prime consultants are encouraged to make the same outreach efforts as other consultants. DBE or SWaM credit will be awarded only for work actually being performed by them. When a DBE or SWaM prime consultant subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime consultant must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

DBE or SWaM certification entitles consultants to participate in VDOT's DBE and SWaM programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.

Mandatory Provisions for Federal-Aid - RFP Professional Services

1. It is the policy of the Virginia Department of Transportation and **the Town of Lovettsville** that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Minority Business Enterprise certified DBE firms is maintained on their web site (<http://www.dmb.e.virginia.gov/>) under the **DBE Directory of Certified Vendors**. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential subconsultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited. **[Include the following wording on federally funded projects with stated DBE goals:** The DBE contract goal for this procurement is TBD%.] **[Include the following wording on federally funded projects without a stated DBE goal:** The Department believes that these services support TBD% DBE participation.]
 - Written documentation of the prime's commitment to the DBE or SWaM firm to subcontract a portion of the services, a description of the services to be performed and the percent of participation.
 - Written confirmation from the DBE or SWaM firm that it is participating, including a description of the services to be performed and the percent of participation.
 3. 49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts. This data must be provided on the enclosed Firm Data Sheet.
 4. VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. The successful prime consultant will be required to complete C- 63 form for both state and federally funded projects on quarterly basis.
 5. Any DBE or SWaM firm must become certified (with the Virginia Department of Minority Business Enterprise) prior to your response being submitted. If DBE or SWaM firm is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE or SWaM subconsultants. DBE or SWaM prime consultants are encouraged to make the same outreach efforts as other consultants. DBE or SWaM credit will be awarded only for work actually being performed by them. When a DBE or SWaM prime consultant subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime consultant must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.
- FOR PROJECTS WITH DBE GOALS SET, PARAGRAPHS 2 THROUGH 5 APPLY:**
2. If portions of the services are to be subcontracted to a DBE or SWaM, the following needs to be submitted with your EOI and both must reference the project number(s) for the services:

**FOR PROJECTS WITH NO DBE GOAL
PARAGRAPH 6 APPLIES**

6. DBE or SWaM certification entitles consultants to participate in VDOT's DBE and SWaM programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.
7. Prior to the time of submittal of the EOI, all business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission Information about business registration can be found at <https://www.scc.virginia.gov/default.aspx>. Foreign Professional corporations and Foreign Professional Limited Liability Companies (i.e., organized or existing under the laws of a state or jurisdiction other than Virginia) must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation <http://www.dpor.virginia.gov/>, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (Board). Board regulations require that all branch offices of professional corporations and business entities located in Virginia, which offer or render any professional services relating to the professions regulated by the Board shall be registered as separate branch office with the Board. All offices, including branches, which offer or render any professional service, must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at that office. All firms involved that are to provide professional services must meet these criteria prior to submitting an Expression of Interest to the **Town of Lovettsville**. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.
8. The **Town of Lovettsville** assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within 10 work days of notification of selection when requested by the Department. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.
9. The Town of Lovettsville will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
10. All firms submitting EOI (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data to the Town of Lovettsville within ten work days of being notified of their selection. Should any firm on the consultant team fail to submit the required audit data within the ten work days, negotiations may be terminated by the Town of Lovettsville and the next most qualified team invited to submit a proposal.
11. The Town of Lovettsville assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within ten work days of notification of selection when requested by VDOT. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.
12. The Town of Lovettsville does not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

13. All firms shall complete and include the following completed forms:

Certification Regarding Debarment – Primary
Covered Transactions (Prime Consultant)
Certification Regarding Debarment - Lower Tier

Covered Transactions (Sub-Consultant)

GOOD FAITH EFFORT

(Include with federal-aid project with DBE Goal)

The Department will accept what consultants submit in their EOI regarding good faith efforts. If a firm that has submitted good faith effort documentation makes the short list, the procuring Division Administrator (cannot be delegated unless he/she will be out of the office for more than five work days) along with a representative of the EO Division will determine if the good faith effort is acceptable.

When there is a contract goal, a consultant must make good faith efforts to meet it. The consultant can do so either through obtaining enough DBE participation to meet the goal or documenting the good faith efforts it made to do so. These means of meeting contract goal requirements are fully equivalent. 49 CFR Part 26 (the Rule) explicitly provides that the Department must not disregard showings of good faith efforts, and it gives consultants the right to have the Department reconsider a decision that their good faith efforts were insufficient. The Department is prohibited from denying a contract to a consultant simply because it did not obtain enough DBE participation to meet the goal. The Department must seriously consider consultants' documentation of good faith efforts. To make certain that consultants' showings are taken seriously, the Rule requires the Department to offer administrative reconsideration to consultants whose good faith efforts showings are initially rejected.

The Rule also ensures flexibility for consultants by requiring that any contract goal be waived entirely for a prime consultant that demonstrates that it made good faith efforts but was still unable to meet the goal.

When the Department sets a contract goal, the basic obligation of consultants is to make good faith efforts to meet it. They can demonstrate these efforts in either of two ways, which are equally valid. First, they can meet the goal, by documenting that they have obtained commitments for enough DBE participation to meet the goal. Second, even though they have not met the goal, they can document that they have made good faith efforts to do so. A refusal by the Department to accept valid showings of good faith is not acceptable under the Rule.

The Rule makes clear that the Department is not to use a "conclusive presumption" approach, in which the apparent successful consultant is summarily found to have failed to make good faith efforts simply because another consultant was able to meet the goal. However, the performance of other consultants in meeting the contract can be a relevant factor in a good faith effort determination, in more than one way. For example, when the apparent successful consultant fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful consultant could have met the goal. It does not, by itself, prove that the apparent successful consultant did not make a good faith effort to get DBE participation, however. On the other hand, if the apparent successful consultant fails to meet the goal, but meets or exceeds the average DBE participation obtained by other consultants, the Department may view this, in conjunction with other factors, as evidence of the apparent successful consultant having made good faith efforts.

The fact that some additional costs may be involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet a DBE contract goal, as long as such costs are reasonable.

If the Department determines that the apparent successful consultant has failed to meet the requirements of a good faith effort, the Department must, before awarding the contract, provide the consultant an opportunity for administrative reconsideration. The Department intends that the process be informal and timely. The Department will ensure that the process is completed within a brief period (e.g., 5-10 days) to minimize any potential delay in procurements. The

consultant will have an opportunity to meet with the reconsideration official, but a formal hearing is not required. As part of this reconsideration, the consultant must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department's decision on reconsideration will be made by an official who did not take part in the original determination that the consultant failed to meet the goal or make adequate good faith efforts to do so. The consultant must have the opportunity to meet in person with the reconsideration official to discuss the issues of whether it met the goal or made adequate good faith efforts to do so. The Department will send the consultant a written decision on reconsideration, explaining the basis for finding that the consultant did or did not meet the goal or make adequate good faith efforts to do so. The Department's reconsideration personnel consists of the Commissioner's DBE Review Panel.

It is up to the Department to make a fair and reasonable judgment whether a consultant that did not meet the goal made adequate good faith efforts. It is important for the Department to consider the quality, quantity, and intensity of the different kinds of efforts that the consultant has made. The efforts employed by the consultant should be those that one could reasonably expect a consultant to take if the consultant were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The Department's determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

If DBE is prime, they will be allowed to count toward goals the work they commit to performing with their own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE consultants on prime contracts will be expected to make the same outreach efforts as other consultants.

When a DBE participates in a contract, the Department will count only the value of the work actually performed by the DBE toward DBE goals. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function. If a DBE firm loses certification, its work no longer counts toward the DBE goal.

All consultants will be required to submit the following information to the Department with the EOI:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The percentage amount of the participation of each DBE firm participating;
- Written documentation of the prime consultant's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts.

The Department has prepared a list based on Federal Regulations of some of the kinds of efforts that consultants may make in obtaining DBE participation. It is not intended to be a mandatory checklist. The Department does not require that a consultant do any one, or particular combination, of the things on the list, nor is the list intended to be exclusive or exhaustive; it merely offers examples. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a consultant has made good faith efforts, it will usually be important for the Department to look not only at the different kinds of efforts that the Consultant has made, but also of the timeliness, quantity, and intensity of these efforts.

The Department offers the following examples of efforts that may be considered:

A. Soliciting through all reasonable and available means (e.g., attendance at project showings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The consultant must solicit this interest within sufficient time to allow the DBEs to participate effectively. The consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

D. (1) Negotiating in good faith with interested DBEs. It is the consultant's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

D. (2) A consultant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's costs, qualifications and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the consultant of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations {for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority community organizations; minority contractors' groups; local, state, and Federal minority business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE

